



Draft Technology Business Tax Certificate Transfer (NOL) Program Rules Proposal for Informal Public Comment

PURPOSE OF DOCUMENT

These draft rules include recommendations related to revising program design and administration for the Technology Business Tax Certificate Transfer (NOL) Program, authorized by the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, and later amended by P.L. 2021, c. 160. In accordance with Executive Order 63, these draft rules are being provided to enable the public to provide input as the New Jersey Economic Development Authority (Authority or NJEDA) begins to launch the programs contained in the new law.

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking [here](#). The law creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;

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- Additional tax credits for film and digital media.

On Friday July 7, 2021, Governor Murphy signed P.L. 2021 c.160 further improving the programs established under the New Jersey Economic Recovery Act of 2020. A courtesy copy of this act can be found [here](#).

The New Jersey Economic Development Authority is soliciting input from the public on the following draft rules pertaining to implementation of Technology Business Tax Certificate Transfer (NOL) Program.

PROGRAM OVERVIEW

The Technology Business Tax Certificate Transfer (NOL) Program is one of the 15+ programs created or updated under the New Jersey Economic Recovery Act of 2020. Originally enacted on January 12, 1998 by P.L. 1997, c. 334, the NOL Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. Proceeds from those sales are required to be re-invested in the seller's business.

P.L.2020, c.156 (New Jersey Economic Recovery Act) authorized the following updates to the NOL Program:

- Increase the annual total amount of tax benefits available for participating companies to \$75,000,000 from \$60,000,000
- Increase the maximum lifetime value of tax benefits available for participating companies to \$20,000,000 from \$15,000,000
- Revise the portion of the defined term "Full-time employee" relating to a health benefits plan
- If needed, allow modification of the following defined terms: "Biotechnology", "Biotechnology company", "Technology company"

P.L. 2021, c. 160 later amended the New Jersey Economic Recovery Act, and authorized the following additional updates to the NOL Program:

- Increase the initial allocation of tax benefits available for participating companies' location within an innovation zone to \$15,000,000 from \$10,000,000
- Expand the type of participating companies subject to the initial allocation to also include ones located within an opportunity zone as well as ones certified as a woman- or minority-owned business (W/MBE) at the time of program application
- Adds the defined term "opportunity zone" as a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

Additional program changes relating to Program fees include:

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- Decreasing the application fee for all participating companies to \$1000 from \$2500
- Adding an approval fee equal to 1 percent of the tax benefit award for any award greater than \$100,000 capped at a max fee of \$20,000 per applicant per year (application fee credited toward approval fee).

ANTICIPATED PROGRAM MILESTONES

The Authority currently anticipates bringing proposed rule amendments for the Technology Business Tax Certificate Transfer (NOL) Program to its Board for consideration on December 8, 2021. If the Board approves the rule amendments, they will be published in the New Jersey Register for a 60-day public comment period.

The Authority may, at its discretion, accept applications based upon any draft rules approved for publication by its Board prior to the completion of the full Administrative Procedures Act process. However, all applicants will be subject to the requirements of the final adopted rules upon the conclusion of the formal comment process.

ECONOMIC RECOVERY ACT TRANSPARENCY WEBSITE

The NJEDA's Economic Recovery Act website (www.njeda.com/economicrecoveryact) allows members of the public to learn more about the programs included in the ERA and provide input on how the Authority will operationalize various aspects of its new incentive programs. The site also allows members of the public to share their thoughts on how NJEDA can make the programs more transparent.

This general feedback process precedes and is separate from the NJEDA's formal procedure to publish and adopt the rule amendments.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public will also be able to submit feedback on Technology Business Tax Certificate Transfer (NOL) Program through the NJEDA's Economic Recovery Act website (<https://www.njeda.com/economicrecoveryact/>) between the following dates:

- **PUBLIC FEEDBACK OPEN: November 10, 2021**
- **PUBLIC FEEDBACK CLOSED: November 24, 2021**

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act or programs amended by the Economic Recovery Act are structured and administered in a manner that drives opportunities for all residents and communities. Members of the public can do that by sending an email to nol@njeda.com or through the online portal on the NJEDA's website.

All feedback received through this process will be assessed and considered when preparing the final version of the rule amendments that is proposed by the Authority for Board approval. Following potential Board approval, there will be a 60-day period for formal public comment.

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Please observe the following guidelines when submitting your feedback:

PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments
- Share your feedback, relevant observations, and additional information.
- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to the Main Street Recovery Finance Program.

We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

SUMMARY OF DRAFT RULES SECTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Technology Business Tax Certificate Transfer Program

Proposed Amendments: N.J.A.C. 19:31-12.1, 12.2, 12.4, 12.5 and 12.7

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2019, c. 145.

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Calendar Referenced: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-_____.

Submit written comment by _____, 2022, to:

Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
P.O. Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the Technology Business Tax Certificate Transfer Program to implement certain policy and statutory revisions pursuant to the recently enacted New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, and P.L. 2021, c. 160, as follows:

N.J.A.C. 19:31-12.1 Applicability and scope – The proposed amendments revise the section to include new statutory citations for P.L. 2020, c. 156 and P.L. 2021, c. 160.

N.J.A.C. 19:31-12.2 Definitions – The proposed amendments update the subchapter to add a new definition of “Board” and “opportunity zone”; and, revise the definition of “full-time employee” pursuant to P.L. 2020, c. 156 pertaining to the requirement that to qualify as a “full time employee” an employee shall receive from the new or expanding emerging technology or biotechnology company certain health benefits, to delete “a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes”, which is replaced with “a health benefits plan authorized pursuant to State or federal law.”

N.J.A.C. 19:31-12.4 Application to the program – The proposed amendment at N.J.A.C. 19:31-12.4(a) reduces the amount of the existing \$2,500 non-refundable application fee to \$1,000; and the proposed amendment at N.J.A.C. 19:31-12.4(d) deletes the terms “Authority’s Board of Directors at its scheduled public meeting,” which is replaced with “Board” pursuant to the proposed new definition at N.J.A.C. 19:31-12.2, pertaining to final consideration of applications.

N.J.A.C. 19:31-12.5 Evaluation process – Proposed new N.J.A.C. 19:31-12.5(d) establishes a new non-refundable approval fee which shall be charged following the approval of the tax benefit by the Division of Taxation in the amount of one percent of the final allocation of tax benefit less the application fee of \$1,000 due upon final approval by the Authority.

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N.J.A.C. 19:31-12.7 Allocation of tax benefits – The proposed amendments revise certain existing tax credit amounts authorized under the program pursuant to P.L. 2020, c. 156, as follows:

N.J.A.C. 19:31-12.7(a) revises references to the annual amount authorized from \$60,000,000 to \$75,000,000 for each State fiscal year, and from \$10,000,000 to \$15,000,000 which shall be allocated exclusively among eligible companies that operate within the boundaries of the innovation zones, and adds “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application;”

N.J.A.C. 19:12.7(a)1 increases the maximum lifetime tax benefit of \$15,000,000 to \$20,000,000;

N.J.A.C. 19:12.7(a)2 increases the allocation, from \$10,000,000 to \$15,000,000, designated for eligible companies in innovation zones and adds as eligible for the allocation “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application;”

N.J.A.C. 19:12.7(a)2i revises the \$250,000 per company allocation provided for eligible companies in innovation zones to include “new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application,” and revises the references to the former \$10,000,000 to \$15,000,000 allocation amount;

N.J.A.C. 19:12.7(a)2ii revises the reference to the former \$10,000,000 allocation to \$15,000,000 and includes, in addition to companies in innovation zones, “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application as pertains to an unused portion of the allocation amount which shall be available for that State fiscal year for certain businesses that do not operate within the boundaries of an innovation zone or that are certified as a woman- or minority-owned business at the time of application;

N.J.A.C. 19:12.7(a)2iii adds to the eligible companies in innovation zones “new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application” as eligible to participate in the remaining unmet eligible benefits in the allocation of the remaining pool as set forth in (a)3; and

N.J.A.C. 19:31-12.7(a)3iii increases the reference to the total amount of benefits authorized from \$60,000,000 to \$75,000,000 pertaining to the allocation on an apportioned basis following approval of certain benefits for applicants in N.J.A.C. 19:31-12.7(a)2, 3i and ii.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1-30-3.3(a)5.

Social Impact

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The Technology Business Tax Certificate Transfer (NOL) Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. The proposed amendments will have a positive social impact as additional biotechnology and technology businesses would be eligible for assistance under the NOL program through the statutory increase in the annual amount authorized for tax credits from \$60,000,000 to \$75,000,000 and the increase in the maximum lifetime tax benefit of \$15,000,000 to \$20,000,000 per eligible business.

Economic Impact

The NOL Program strengthens the State's innovation economy through expanded financial support for emerging biotechnology and technology businesses. Therefore, it is anticipated that the availability of the increased tax credits will have a positive social impact.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments will result in the continued creation of an indeterminate number of new full-time, private sector jobs at emerging technology and biotechnology businesses in New Jersey as additional applicants are eligible and participating businesses make use of the expanded lifetime tax benefit.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the expanded and increased tax credits. Generally, a business would be required to comply with the EDA's standard, on-line application process, otherwise, it is not anticipated that there will be a need for professional services, nor should there be any costs related to compliance with the proposed amendments. In addition, the proposed new amendments include a reduced application fee and new graduated approval fee designed to reduce the burden on applicants that may be small businesses.

Housing Affordability Impact Analysis

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The proposed amendments will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. The proposed amendments increase certain tax credit amounts available under the NOL Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Smart Growth Development Impact Analysis

The proposed amendments will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments increase certain tax credit amounts available under the NOL Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

FULL TEXT OF DRAFT RULES

19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c. 334, as amended by P.L. 2009, c. 90, [and] P.L. 2010, c. 10, **P.L. 2020, c. 156, and P.L. 2021, c. 160**. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

19:31-12.2 Definitions

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

...

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

...

“Full-time employee” means a person employed by a new or expanding emerging technology or biotechnology company on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or

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practice as full-time employment and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under [a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes] **a health benefits plan authorized pursuant to State or federal law.** "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

...

"Opportunity zone" means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

...

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable [\$2,500] **\$1,000** application fee. Complete applications must be received by June 30 for each State fiscal year.

(b)-(c) (No change.)

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the [Authority's Board of Directors at its scheduled public meeting] **Board.**

(e) (No change.)

19:31-12.5 Evaluation process

(a) (No change.)

(b)-(c) (No change.)

(d) Upon the final approval of the tax benefit by the Division of Taxation, a non-refundable fee of one percent of the amount of the final allocation of tax benefit less the application fee of \$1,000 shall be charged prior to approval by the Authority.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than [\$60,000,000] **\$75,000,000** of tax benefits over each State fiscal year. Of the [\$60,000,000] **\$75,000,000** of transferable tax benefits authorized for each State fiscal year [\$10,000,000] **\$15,000,000** shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones **or for new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, except as provided in (a)2ii below. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of [\$15,000,000] **\$20,000,000**.

2. The Authority shall allocate the [\$10,000,000] **\$15,000,000** designated for eligible companies in innovation zones **or for new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application** as follows:

i. For eligible companies in innovation **zones or for new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, each company is eligible for an allocation of the lesser of \$250,000 or the value of their eligible benefits. After these allocations are made to these companies from the [\$10,000,000] **\$15,000,000** innovation zone/**new and expanding emerging technology and biotechnology** allocation, any remaining balance of the [\$10,000,000] **\$15,000,000** shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;

ii. If, in any State fiscal year, there is an unused portion of the [\$10,000,000] **\$15,000,000** allocated exclusively for companies in innovation zones **or for new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone **or that are new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**; and

iii. The eligible companies in innovation zones **or for new and expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned**

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business at the time of program application with remaining unmet eligible benefits shall participate in the allocation of the remaining pool as set forth in (a)3 below.

3. The Authority shall allocate the remaining tax benefits as follows:

i.-ii. (No change.)

iii. If the total amount of benefits authorized under (a)2 and 3i and ii above exceeds [\$60,000,000] **\$75,000,000**, each applicant shall receive a lesser amount on an apportioned basis, otherwise after the dollars are set aside in the amounts provided in (a)2 and 3i and ii above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

Numerator of Fiscal Year Dollar Authorization less Total Minimum Tax Benefits Authorized over denominator of Total Tax Benefits Requested to be Transferred less Total Minimum Tax Benefits Authorized.

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.