

**OSW Tax Credit FAQs – (Note: Rules have not been adopted and the answers are subject to change)**

1. Is there a prevailing wage requirement for the OSW tax credit program?

The project must comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all construction related costs and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing with the effective date of the rules. The prevailing wage requirement applies to any construction related costs incurred prior to submitting the application as well as any outstanding construction related costs included in the application that the Applicant anticipates incurring, for which the applicant is seeking financial assistance.

Effective April 1, 2020, contractors and subcontractors for construction contracts that require payment of prevailing wage must provide proof of registration under the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.) The Act does not require proof of registration for such contracts that were awarded prior to April 1, 2020. Information regarding this Act can be found on the NJ Dept. of Labor's Website.

Applicants will be required to submit certified payroll documentation for any construction related costs incurred prior to submitting the application for which they seek financial assistance.

2. How are supply chain jobs defined? Can an applicant count jobs from a supply chain partner to be eligible for the program?

There is no definition for "supply chain jobs". The regulations allow businesses to meet the minimum number of new full-time employees (as that term is defined in the regulations) at the qualified wind energy facility or through an equipment supply coordination agreement (N.J.A.C. 19:31-20.3(a)(1)(ii) and (a)(2)(iii).

The term "Equipment supply coordination agreement" is defined in pertinent part in the statute as: "an agreement between a business and equipment manufacturer, supplier, installer, and operator that supports a qualified offshore wind project, or other wind energy project as determined by the authority." Section 109 P.L. 2020, c. 156.

3. How is a qualified wind energy facility defined? Can it consist of more than one building?

The term "Qualified wind energy facility" means "any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development, or administration of component parts that is primarily used to support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority" (N.J.A.C 19:31-20.2).

A complex of buildings is defined as buildings that are part of the same financing plan and operational plan. As such, any sites or facilities must satisfy this definition in order to be considered part of a complex of buildings.

4. Do new full-time employees in the project have to spend 80% of their time at a qualified wind energy facility?

New full-time employees must spend at least 80% of their time at the qualified wind energy facility. New full-time employees resulting from an equipment supply coordination agreement need to spend 80% of their time in New Jersey.

The term “New full-time employee” is defined as: “a position that did not previously exist in this State and that is created by the business and filled by a full-time employee at the qualified wind energy facility. A new full-time employee may also include new full-time employee resulting from an equipment supply coordination agreement, provided that the employee **spends at least 80 percent of his or her time in New Jersey**, or any other period of time in New Jersey generally accepted by custom or practice as full-time employment, as determined by the Authority. New full-time employee resulting from an equipment supply coordination agreement may include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent. With regard to new full-time employees resulting from an equipment supply coordination agreement, one "new full-time employee" means 35 hours of employment per week dedicated to the work required under the agreement, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, regardless of whether or not the hours of work were performed by one or more persons. New full-time position shall also include new full-time positions that a business creates after receipt of approval, pursuant to N.J.A.C. 19:31-20.7, that are transferred to the qualified wind energy facility upon completion thereof and meet the requirements of this Program.” (emphasis added) N.J.A.C. 19:31-20.2.

A “Full-time employee at the qualified wind energy facility” is defined as “a full-time employee whose primary office is at the site and who **spends at least 80 percent of his or her time at the facility**, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.” (emphasis added) N.J.A.C. 19:31-20.2.

5. What specific sites in a municipality qualifies for the Offshore Wind Industry tax incentive program?

The statute previously awarded tax credits to businesses with qualified wind energy facilities located within an eligible wind energy zone but the Economic Recovery Act (ERA) amended that and now allows an award for a qualified wind energy facility located anywhere in the State.

6. How does the ramp-up period for the jobs work?

The business must meet the employment requirement over a five-year period and will receive the tax credits over the five-year period at an amount of 20% of the total award over 5 years. The minimum threshold for the number of employees that a business needs to meet in the 1st, 2nd, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> year is 100, 150, 200, 300 and 300 new full time employees respectively compared to the number of full-time employees at the time of application.

7. To meet the net benefits test, are local taxes and utility taxes eligible to be included in the calculation?

In determining whether the company meets the net positive economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct benefits to the State, including local taxes that may benefit the State.

The Authority shall also consider indirect benefits caused by the business's relocation to New Jersey except, that the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full-time employees.

8. What if the applicant falls short on the minimum number of new full-time employees during and after the eligibility period?

During the eligibility period, under N.J.A.C. 19:31-20.12(a) and (b), if the company falls short of the statewide or minimum number of new full-time employees, it will forfeit its credit amount for that tax period and each subsequent tax period until it restores to the required numbers. For projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the eligibility period, the Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the eligibility period based on a recoupment schedule in the approval letter. The business shall have twelve months to restore the new full-time jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.

9. What is the definition of "capital investment"?

Capital investment" in a qualified wind energy facility means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs, provided soft costs shall not exceed 20 percent of all capital investment. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified wind energy facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. To be included, the capital investment must be commenced after August 19, 2010, the effective date of the Act. This means that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

10. Are there additional incentives that an OSW Tax Credit applicant can pursue in addition to this program?

The OSW Tax Credit program requires that the applicant meet the minimum number of new full-time jobs for every year. Applicants will most likely not be able to use incented jobs under this program for the calculation of incentives under other EDA programs. Applicants will most likely be unable to count capital investments made in this program for other incentive programs. However, applicants should research the other opportunities on EDA's website at [www.njeda.com](http://www.njeda.com).

11. Is there any limitation on the taxpayer's ability to carry [the tax credits] forward?

There is a 20 privilege period carry over if the current period tax credit exceeds the taxpayer's current year tax liability. N.J.A.C. 19:31-20.9. Note: this answer is general in nature and is provided to assist but is not meant to be tax advice. An applicant should consult a tax advisor or attorney for advice specific to the applicant.

12. Is there any limit on the amount you can use to offset against current income in a carry forward year?

No, there is no limit on the amount you can use to offset against current income in a carry forward year. The tax credit can reduce a taxpayer's tax liability to zero, and there is no minimum tax limitation. However, the tax credit is not refundable. N.J.A.C. 19:31-20.9. Note: this answer is general in nature and is provided to assist but is not meant to be tax advice. An applicant should consult a tax advisor or attorney for advice specific to the applicant.

13. Clarification regarding capital investment eligibility and tax credit award sizes:

- a. NJEDA will only award tax credits for eligible capital investments once. In no case will the cumulative tax credits awarded to an owner and/or tenants of a Qualified Wind Energy Facility exceed the cumulative eligible capital investments made at that Facility.
- b. An Applicant must obtain the consent of the owner and/or tenant(s) of the Qualified Wind Energy Facility if they intend on including these entities' eligible capital investment towards calculating the Applicant's tax credits.

14. Clarification regarding the counting of new-full time employees:

- c. NJEDA will only count each new full-time employee once. In no case will new full-time employees who are aggregated by the owner and/or tenant(s) of a Qualified Wind Energy Facility be counted more than once for purposes of awarding tax credits.
- a. If an Applicant opts to aggregate the number of new full-time employees at the Qualified Wind Energy Facility with the Facility's owner and/or tenant(s) as part of their application, this relationship will be viewed as an equipment supply coordination agreement. As such, the Applicant will need to provide a copy of the equipment supply coordination agreement that demonstrates that the Facility's owner and/or tenant(s) consent to having their new full-time employees counted towards the Applicant's project.