

CHAPTER 415

AN ACT granting a tax credit to certain businesses that contribute to State-approved nonprofit organizations which engage in activities that foster the preservation and revitalization of low and moderate income neighborhoods and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:27D-490 Short title.

1. This act shall be known and may be cited as the "Neighborhood Revitalization State Tax Credit Act."

C.52:27D-491 Definitions relative to the "Neighborhood Revitalization State Tax Credit Act."

2. As used in this act:

"Assistance" means the contribution of moneys to aid in the provision of neighborhood preservation and revitalization services or community services.

"Business entity" means any business firm or individual which is authorized to conduct or operate a trade or business in the State and is subject to taxes on business related income.

"Certificate for neighborhood revitalization State tax credits" means the certificate in the form prescribed by the Treasurer and issued by the commissioner to a business entity that specifies the dollar amount of neighborhood preservation and revitalization State tax credits that that business entity may take as an annual credit against certain state taxes pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.).

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

"Eligible neighborhood" means a contiguous area located in a municipality that, at the time of the application to the department for approval of a neighborhood preservation and revitalization plan, is either eligible to receive aid under the "Special Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.) or coextensive with a school district which qualified for designation as an "Abbott district" pursuant to the "Comprehensive Educational Improvement and Financing Act of 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.).

"Housing and economic development activities" means those activities carried out in furtherance of a neighborhood preservation and revitalization plan in an eligible neighborhood approved pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), to improve the housing and economic conditions of the neighborhood; and shall include, without limitation, measures to foster the rehabilitation and construction of housing affordable to low and moderate income households within the neighborhood, including planning, design, rehabilitation, construction, and management of low and moderate income housing, home buyer counseling, and related activities needed to effectuate the rehabilitation and construction of housing affordable to low and moderate income households; measures to increase business activity within the neighborhood, including the rehabilitation and construction of commercial facilities and the provision of assistance to small business entities; and measures to increase the income and labor force participation of neighborhood residents, including provision of education, training, child care and transportation assistance to enable low income neighborhood residents to obtain or retain employment.

"Low income household" means a household whose gross household income is less than 50 percent of the median gross household income for the region in which the neighborhood is located for households of similar size as determined by the department.

"Moderate income household" means a household whose gross household income is greater than or equal to 50 percent but less than 80 percent of the median gross household income of the region in which the neighborhood is located for households of similar size as determined by the department.

"Neighborhood preservation and revitalization activities" means housing and economic development activities and other neighborhood preservation and revitalization activities.

"Neighborhood Revitalization Plan" means a plan for the preservation or revitalization of an eligible neighborhood.

"Nonprofit organization" means a private nonprofit corporation that has been determined by the Internal Revenue Service of the United States Department of the Treasury to be exempt from income taxation under 26 U.S.C.s.501(c)(3).

"Other Neighborhood Revitalization Activities" means those activities, other than housing and economic development activities, carried out in furtherance of a State-approved neighborhood preservation and revitalization plan in a qualified low and moderate income neighborhood, and may include, without limitation, improvements to infrastructure, street scape, public open space, and transportation systems; provision of social and community services, health care, crime prevention, recreation activities, community and environmental health services; and community outreach and organizing activities.

"Qualified nonprofit organization" means a nonprofit organization that has demonstrated a commitment to the neighborhood for which it is submitting a plan or project, as reflected in its past activities or proposed activities in a preservation and revitalization plan.

"Qualified project" means one or more housing and economic development activities to be carried out in accordance with a neighborhood revitalization plan as approved by the commissioner with funds provided by a business entity eligible to receive a certificate for neighborhood revitalization State tax credits.

C.52:27D-492 Eligibility of business entity for certificate for neighborhood revitalization state tax credits.

3. A business entity shall be eligible for a certificate for neighborhood revitalization State tax credits if it has provided funding for a qualified project that has been approved in accordance with sections 4 and 5 of P.L.2001, c.415 (C.52:27D-493 and C.52:27D-494).

a. Credits may be granted in an amount up to 50 percent of the approved assistance provided to a nonprofit organization to implement a qualified neighborhood preservation and revitalization project.

b. The credit may be applied by the business entity receiving the certificate as credit against tax imposed on business related income, other than tax imposed under the New Jersey Gross Income Tax, including, but not limited to, business income subject to the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the sewer and water utility excise tax imposed pursuant to section 6 of P.L.1940, c.5 (C.54:30A-54) and the petroleum products gross receipts tax imposed pursuant to section 3 of P.L.1990, c.42 (C.54:15B-3).

c. The credit allowed to a business entity under this section may not exceed for any taxable year \$500,000 or the total amount of tax otherwise payable by the business entity for the taxable year, whichever is less, and, in addition, shall not exceed limitations placed on the amounts of credits or carryforward credits allowed, if any, under the relevant statute as enumerated in subsection b. of this section concerning the tax for which a credit is being claimed.

d. Credit shall not be allowed for activities for which the business entity is receiving credit under any other provision against any tax on business related income other than the New Jersey Gross Income Tax, including, but not limited to, the corporate business tax, corporate income tax, insurance premiums tax, petroleum products gross receipts tax, public utilities franchise tax, public utilities gross receipts tax, public utility excise tax, railroad franchise tax, and the saving institution tax.

e. The tax credit shall be awarded only for assistance provided within the same year in which the commissioner issued the certificate, or if the commissioner approved assistance for more than one year, within the year in which payment was scheduled and made. The provisions of this subsection may be waived for good cause shown.

f. The total tax credits certified for all qualified projects proposed in a fiscal year shall not exceed \$10,000,000.

C.52:27D-493 Neighborhood preservation and revitalization plan required for eligibility.

4. In order for an entity to be eligible to receive a tax credit pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), the nonprofit organization which is the recipient of funding provided by the entity shall submit a neighborhood preservation and revitalization plan to the department for approval, and shall submit a proposed project which defines the elements of the plan to be

implemented with the funds provided. Two or more nonprofit organizations may submit a plan to the department jointly. Any such plans shall designate one nonprofit organization as the lead organization with responsibility for the plan.

C.52:27D-494 Approval of plan by department; standards.

5. a. The department shall determine whether a neighborhood preservation and revitalization plan should be approved. The department shall approve a neighborhood preservation and revitalization plan if it satisfies the following standards:

(1) the plan designates an eligible neighborhood; and

(2) The plan was developed through a process that

(a) gave written notice to the municipality in which the neighborhood is located of its intention to develop a plan and utilized reasonable means to inform residents, property owners, and businesses in the neighborhood of its intention to develop a plan and provided opportunities for them to participate in the development of the plan;

(b) gave written notice to the municipality in which the neighborhood is located of the proposed plan and provided an opportunity for it to comment upon it orally and in writing, complied with all of the requirements of the "Municipal Land Use Law," P.L.1975, c. 291 (C. 40:55D-1 et seq.) concerning the plan, utilized reasonable means to inform residents, property owners, and businesses in the neighborhood of the proposed plan and provided an opportunity for them to comment upon it orally and in writing; and

(c) involved consultation with nonprofit organizations located within the neighborhood or providing services to residents of the neighborhood;

(3) The plan is not inconsistent with

(a) any redevelopment plan adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and currently being implemented; or

(b) any neighborhood empowerment plan approved by the State pursuant to section 49 of P.L.1996, c.62 (C.55:19-64);

(4) The plan sets forth an overall concept of the future of the neighborhood; one or more strategies to foster preservation and revitalization of the neighborhood in accordance with that concept; one or more activities, including housing and economic development activities and other preservation and revitalization activities proposed within the neighborhood to foster preservation and revitalization of the neighborhood in furtherance of those strategies, including a description of funding sources obtained or to be sought for the planned activities and a timetable for the conduct of those activities; and

(5) The plan covers a period of no less than two and no more than ten years.

b. A nonprofit organization may, in submitting a proposed plan pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.), adopt a redevelopment plan adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and currently being implemented; or a State-approved neighborhood empowerment plan pursuant to section 49 of P.L.1996, c.62 (C.55:19-64) as its neighborhood preservation and revitalization plan or a neighborhood preservation and revitalization plan previously approved by the department. The department shall approve such a plan.

c. A nonprofit organization that has submitted a neighborhood preservation and revitalization plan to the department may seek to amend it at any time. The department shall approve amendments if they comply with the standards set forth in subsection b. of this section.

C.52:27D-495 Project proposed by nonprofit organization, determination as to qualification.

6. a. The department shall determine in accordance with law and regulation whether a project proposed by a nonprofit organization is qualified for assistance for which a tax credit certificate will be granted pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.).

b. The department shall determine that a project proposed by a nonprofit organization or jointly by two or more nonprofit organizations is qualified for assistance if it meets all the following standards:

(1) The project consists of neighborhood preservation and revitalization activities within an eligible low and moderate income neighborhood. If two or more nonprofits propose

a project jointly, all the proposed activities are within the same eligible low and moderate income neighborhood. The department may establish standards for waiver of compliance with this paragraph for activities located outside an eligible neighborhood but which particularly benefit residents of that neighborhood or for activities that benefit more than one eligible neighborhood.

(2) The project is reasonably designed to accomplish its intended purpose and it would further the purposes of a neighborhood preservation and revitalization plan approved in accordance with section 5 of this act.

(3) The nonprofit organization demonstrates that it has the capacity to carry out the activities.

(4) The nonprofit organization provides adequate assurances that the assistance will be expended exclusively for the proposed activities.

(5) "Housing and economic development activities" make up at least 60 percent of the total cost of the neighborhood preservation and revitalization activities in the proposed project. If two or more nonprofit organizations jointly propose a project, the total cost shall include the aggregate cost of all the activities included in the joint proposal.

c. The department shall establish by regulation the standards and procedures for determining which projects shall be determined to be qualified if the total tax credits certified under P.L.2001, c.415 (C.52:27D-490 et seq.) will exceed, or appears likely to exceed, \$10,000,000 for the year, so as to remain within that annual limit. Such standards shall establish criteria for rating projects which shall take into account, among other things, the following factors:

(1) The extent to which the project is addressing urban distress, as measured by existing levels of poverty and unemployment within the neighborhood;

(2) The extent to which the project is likely to attract private or public investment to the subject project or other projects in the neighborhood; and

(3) The extent to which the nonprofit organization has demonstrated the capacity to carry out the project.

Such standards shall focus exclusively on the relative merits of the project (including the capacity of the nonprofit to carry out the project) and shall not include any consideration of whether the project has, or does not yet have, a proposed source of assistance by a business entity.

C.52:27D-496 Issuance of certificate.

7. a. The commissioner shall determine, in accordance with law and regulation, whether to issue a certificate based upon proposed assistance by a business entity to a nonprofit organization to implement a qualified project.

b. The commissioner shall issue a certificate if the proposed assistance satisfies the following standards:

(1) The assistance is for a qualified neighborhood preservation and revitalization project;

(2) The assistance is not less than \$25,000 in each tax year for which credit is sought. Assistance may be approved for the current tax year and up to four additional years in the future. If assistance is approved for years other than the current tax year, the approval shall include a schedule showing the amount of assistance to be provided in each year;

(3) Neither the business entity nor any wholly owned subsidiary has previously failed to provide assistance to a nonprofit organization for which approval was granted. This requirement may be waived by the department upon a showing of good cause;

(4) The total of all assistance approved on behalf of a nonprofit organization per project does not exceed \$500,000; and

(5) The amount of assistance as proposed in a letter of intent from the business entity has been paid to the State Treasurer and deposited in a special trust account for the use of a qualified nonprofit organization in carrying out a qualified project, and the State Treasurer has sent authorization for issuance of a certificate to the commissioner. The qualified nonprofit shall have full access to the funds in the special trust account, subject to the provisions of section 8 of P.L.2001, c.415 (C.52:27D-497).

C.52:27D-497 Monitoring of projects carried out by nonprofit organizations.

8. a. The commissioner shall monitor the carrying out by nonprofit organizations of projects for which assistance has been received and tax credits awarded pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.) to ascertain whether the assistance is being used for the activities for which it was approved. The commissioner may require the submission of reports, the audit of financial records, the conduct of investigations, the posting of bonds or security and the inspection of activities whether carried out on the premises of the nonprofit organization or elsewhere. In furtherance of this function, the commissioner, or his or her designee, may issue subpoenas, hold evidentiary hearings, and administer oaths.

b. If, after notice and hearing, the commissioner determines that assistance is not being used for the activities for which it was approved, the commissioner may impose sanctions, including but not limited to:

(1) Requiring corrective actions by the nonprofit organization;

(2) Requiring that assistance or its cash value be paid back to the department. The department shall account for such funds to the Treasurer and may expend them in any manner that lawfully furthers the purposes of P.L.2001, c.415 (C.52:27D-490 et seq.).

(3) Revoking the department's determination that the project was qualified; or

(4) Barring the nonprofit for a period of time from approval of future projects.

c. No sanction imposed by the commissioner against the nonprofit organization shall affect the validity of the credits for assistance already contributed allowed to a business entity that was not on notice of the wrongful actions of the nonprofit at the time it made the contribution.

d. In the event a project proposed by a nonprofit cannot be completed, the department may take whatever action necessary to ensure that the funds earmarked for the failed project are reallocated to a project which is proceeding.

C.52:27D-498 Establishment for forms, procedures, rules; annual report to Governor, Legislature.

9. a. In order to administer the neighborhood preservation and revitalization tax credit program, the department shall establish any necessary forms, procedures or rules to effectuate this act, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The department shall seek to foster use of the tax credit and to make the tax credit simple to apply for and simple to use.

b. The department shall act as a clearinghouse. It shall maintain lists of qualified projects and of business entities that have expressed a desire to provide assistance to qualified projects.

c. The department shall give priority in processing to applications that demonstrate a multi-year commitment by the business entity to implementation of the neighborhood preservation and revitalization plan.

d. The department shall submit to the Governor and Legislature an annual report which shall include at least:

(1) the purpose and effectiveness of the credit;

(2) the benefits of the credit to the state;

(3) any recommendations by the department as to changes in legislation needed to better carry out the purposes of P.L.2001, c.415 (C.52:27D-490 et seq.).

e. For each application by, or behalf of, a business entity to approve assistance for a project, the department may charge a fee of up to 0.5 percent of the amount of assistance proposed, or approved, whichever is less, to pay for the administration of this program.

C.52:27D-499 Copy of certificate to taxpayers of the century.

10. a. If a partnership, an S corporation, or a limited liability company qualifies for the credit, it shall provide a copy of the certificate to the taxpayers of the entity.

b. A taxpayer shall attach a copy of the certificate to any return upon which a credit is claimed under this section.

c. Any credit taken in this section may be subject to audit by the department or the State Treasurer.

11. This act shall take effect on the first day of the next State fiscal year after its enactment.

Approved January 8, 2002.