

CHAPTER 194

AN ACT expanding the economic development incentives for municipal rehabilitation and economic recovery in certain fiscally distressed municipalities, amending P.L.2002, c.43.

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

1. Section 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended to read as follows:

C.52:27BBB-53 Definitions relative to open for business incentives.

54. As used in this section and section 55 of P.L.2002, c.43 (C.52:27BBB-54):

a. "Business facility" means any factory, mill, plant, refinery, warehouse, building, complex of buildings or structural components of buildings, and all machinery, equipment and personal property located within a qualified municipality, used in connection with the operation of the business of a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, and all facility preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

b. "Business relocation or business expansion property" means improvements to real property and tangible personal property, but only if that improvement or personal property is constructed or purchased and placed in service or use by the taxpayer, for use as a component part of a new business facility or expanded business facility located in a qualified municipality.

(1) Business relocation or business expansion property shall include only:

(a) improvements to real property placed in service or use as a business facility by the taxpayer on or after the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality;

(b) tangible personal property placed in service or use by the taxpayer on or after the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality, with respect to which depreciation, or amortization in lieu of depreciation, is allowable for federal income tax purposes and which has a remaining recovery period of three or more years at the time the property is placed in service or use in a qualified municipality; or

(c) tangible personal property owned and used by the taxpayer at a business location outside a qualified municipality which is moved into a qualified municipality on or after the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality, for use as a component part of a new or expanded business facility located in the qualified municipality; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in a qualified municipality.

(2) Property purchased for business relocation or expansion shall not include:

(a) repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(b) airplanes;

(c) property which is primarily used outside a qualified municipality with that use being determined based upon the amount of time the property is actually used both within and without the qualified municipality;

(d) property which is acquired incident to the purchase of the stock or assets of the seller.

(3) Property shall be deemed to have been purchased prior to a specified date only if:

(a) the physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date; or

(b) the machinery or equipment was owned by the taxpayer prior to the specified date, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date.

c. "Business relocation or business expansion" means capital investment in a new or

expanded business facility in a qualified municipality.

d. "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

e. "Director" means the Director of the Division of Taxation in the Department of the Treasury.

f. "Expanded business facility" means any business facility, other than a new business facility, resulting from acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the effective date of rehabilitation and economic recovery.

g. "Incentive payment" means: the amount of tax owed by a taxpayer for a privilege period or reporting period, as computed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or section 7 of P.L.2002, c.40 (C.54:10A-5a), or sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), or section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, multiplied for each privilege period or reporting period by a fraction, the numerator of which is the average value of the taxpayer's business relocation or business expansion property within a qualified municipality during the period covered by its report, and the denominator of which is the average value of all the taxpayer's real and tangible personal property, excluding improvements made after the date of a taxpayer's first acquisition of business relocation or business expansion property in the qualified municipality to business facilities in existence on that date outside of the qualified municipality, in New Jersey during such period which result is multiplied by 96 percent; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value whether the corporation is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), the tax imposed pursuant to section 1 of P.L.1950, c.231 (C.17:32-15) or the tax imposed pursuant to N.J.S.17B:23-5; and provided further that the value of a leasehold interest in realty located within a qualified municipality shall be based on no less than the fair market value of its rent; and provided further that incentive payments shall be made for a period not to exceed 10 years, commencing on the date of a taxpayer's first acquisition of business relocation or business expansion property in the qualified municipality following the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality.

h. "New business facility" means a business facility which:

(1) is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.) or pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5. A business facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(2) is purchased by a taxpayer and is placed in service or use on or after the effective date of rehabilitation and economic recovery;

(3) was not purchased by a taxpayer from a related person; and

(4) was not in service or use during the 90-day period immediately prior to transfer of the title to the facility.

i. "Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

j. "Purchase" means, with respect to the determination of whether business relocation or business expansion property was purchased, any acquisition of property, including an acquisition pursuant to a lease, and an acquisition pursuant to a lease under which the lessee or affiliates of

the lessee are the primary occupants under a lease of ten years or more, but only if:

(1) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;

(2) the property is not acquired by one member of a controlled group from another member of the same controlled group; and

(3) the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(a) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(b) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

k. "Related person" means:

(1) a corporation, partnership, association or trust controlled by the taxpayer;

(2) an individual, corporation, partnership, association or trust that is in control of the taxpayer;

(3) a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(4) a member of the same controlled group as the taxpayer.

2. Section 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended to read as follows:

C.52:27BBB-54 "Qualified Municipality Open for Business Incentive Program."

55. a. There is established in the authority the "Qualified Municipality Open for Business Incentive Program," the purpose of which is to foster business investment in qualified municipalities. Businesses that locate or expand in a qualified municipality during the period that the municipality is under rehabilitation and economic recovery shall be eligible to receive a rebate from the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5 as provided herein.

b. For each year in which a taxpayer is eligible for a rebate of a portion of the incentive payment, the Director of the Division of Taxation shall certify to the State Treasurer (1) that the taxpayer's corporation business tax return or insurance premiums tax return has been filed; (2) that the taxpayer's entire corporation business tax obligation or insurance premiums tax obligation has been satisfied; and (3) the amount of the taxpayer's incentive payment entitlement. Upon such certification, the treasurer shall certify to the executive director of the authority the amount of the taxpayer's incentive payment and, subject to the approval of the Director of the Division of Budget and Accounting, transfer that incentive payment to the fund established with the proceeds of those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43.

c. The executive director of the authority shall rebate to the taxpayer up to 75% of the incentive payment paid by the taxpayer and placed by the treasurer into a fund established using those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate within two years of deposit of the incentive payment into the fund and establishes to the satisfaction of the executive director of the authority that the taxpayer will utilize those monies for business relocation or business expansion property that will be placed in service or use by the taxpayer after the date of the rebate application. The authority may rebate to the taxpayer up to 100% of the incentive payment paid by the taxpayer and placed by the treasurer into a fund established using those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate and the authority determines that a particular business relocation or business expansion will more effectively contribute to the municipal rehabilitation and economic recovery in a qualified municipality as sought by the Legislature through the enactment of P.L.2002, c.43. In making this determination the authority shall consider: 1) the amount of private investment, 2) the number of jobs concerned, 3) the projected average salary of the employees, 4) whether the investment has the potential to attract

additional investment, 5) the impact to the State Treasury, and 6) any other factors that uniquely contribute to the municipal rehabilitation and economic recovery of the qualified municipality. The taxpayer may apply for this incentive prior to its undertaking of the business relocation or business expansion and upon approval the authority may establish a rebate schedule for the incentive payment for a period not to exceed ten years, subject to the taxpayer's continued satisfaction of the criteria of this act and to annual appropriation. The cumulative amount of monies distributed to the taxpayer pursuant to this section shall not exceed the amount paid or to be paid by the taxpayer for the business relocation or business expansion property. In the event that the taxpayer does not establish its eligibility for a rebate of a portion of the incentive payment within two years of its deposit into the fund, the fund shall retain any remaining amount of the incentive payment.

3. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended to read as follows:

C.52:27BBB-55 Application for CBT insurance tax credit, certain, for new positions.

56. a. A taxpayer engaged in the conduct of business within a qualified municipality and who is not receiving a benefit under the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), may apply to receive a tax credit against the amount of tax otherwise imposed under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, equal to: \$2,500 for each new full-time position at that location in credit year one and \$1,250 for each new full-time position at that location in credit year two.

b. (1) The credit pursuant to subsection a. of this section for credit year one shall be allowed for the privilege period or reporting period in which or with which credit year one ends; the credit pursuant to subsection a. of this section for credit year two shall be allowed for the privilege period or reporting period in which or with which credit year two ends.

(2) An unused credit may be carried forward, if necessary, for use in the privilege periods or reporting periods following the privilege period or reporting period for which the credit is allowed.

(3) The order of priority of the application of the credit allowed under this section and any other credits allowed by law shall be as prescribed by the Director of the Division of Taxation. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law, shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. (1) Notwithstanding the provisions of subsection b. of this section to the contrary, the credit allowed for credit year one may be refundable at the close of the privilege period or reporting period in which or with which credit year two ends, pursuant to the requirements and limitations of this subsection.

(2) That amount of the credit received for credit year one remaining, if any, after the liabilities for the privilege period or reporting period in which or with which credit year two ends and for any prior period have been satisfied, multiplied by the sustained effort ratio, shall be an overpayment for the purposes of section R.S.54:49-15 for the period in which or with which credit year two ends; that amount of the credit received for credit year one remaining, if any, that is not an overpayment pursuant to this paragraph may be carried forward pursuant to subsection b. of this section.

d. The burden of proof shall be on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the credits or refund allowed pursuant to this section. The director shall by regulation establish criteria for the determination of when new or expanded operations have begun at a location. No taxpayer shall be allowed more than a single 24-month continuous period in which credits shall be allowed for activity at a location within a qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

e. For the purposes of this section:

"Credit year one" means the first twelve calendar months following initial or expanded operations at a location within a qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

"Credit year two" means the twelve calendar months following credit year one.

"Employee of the taxpayer" does not include an individual with an ownership interest in the business, that individual's spouse or dependants, or that individual's ancestors or descendants.

"Full time position" means a position filled by an employee of the taxpayer for at least 140 hours per month on a permanent basis, which does not include employment that is temporary or seasonal.

"New full time position" means a position that did not exist prior to credit year one. New full time positions shall be measured by the increase, from the twelve-month period preceding credit year one to the measured credit year, in the average number of full-time positions and full-time position equivalents employed by the taxpayer at the location within a qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). The hours of employees filling part-time positions shall be aggregated to determine the number of full-time position equivalents.

"Part-time position" means a position filled by an employee of the taxpayer for at least 20 hours per week for at least three months during the credit year.

"Sustained effort ratio" means the proportion that the credit year two new full-time positions bears to the credit year one new full-time positions, not to exceed one.

4. This act shall take effect immediately, and apply to privilege periods and reporting periods beginning on or after June 30, 2002.

Approved November 21, 2003.