

CHAPTER 346

AN ACT allowing tax credits to certain businesses for certain capital investments in urban transit hubs, supplementing Title 34 of the Revised Statutes.

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

C.34:1B-207 Short title.

1. This act shall be known and may be cited as the “Urban Transit Hub Tax Credit Act.”

C.34:1B-208 Definitions relative to the “Urban Transit Hub Tax Credit Act.”

2. As used in this act:

“Business” means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to 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) or N.J.S.17B:23-5, or is a partnership.

“Capital investment” in a qualified business facility means expenses incurred after, but before the end of the eighth year after, the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: (i) the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property; and (ii) 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.

“Commission” means the New Jersey Commerce Commission.

“Eligible municipality” means a municipality: (1) which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of the value of real property is exempt from local property taxation. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“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 full-time employment and whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.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 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.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.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Qualified business facility” means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

“Urban transit hub” means property located within a 1/2 mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, delineated by the commission pursuant to subsection e. of section 3 of P.L.2007, c.346 (C.34:1B-209). A property which is partially included within the radius shall only be considered part of the hub if over 50 percent

of its land area falls within the radius. "Rail station" shall not include any rail station located at an international airport.

C.34:1B-209 Credit for qualified business facilities, conditions for eligibility; allowance.

3. a. (1) A business, upon application to and approval from the New Jersey Commerce Commission, shall be allowed a credit of 100 percent of its capital investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section.

(2) A business, other than a tenant eligible pursuant to paragraph (3) of this subsection, shall make or acquire capital investments totaling not less than \$75,000,000 in a qualified business facility, at which the business shall employ not fewer than 250 full-time employees to be eligible for a credit under this section. A business that acquires a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller.

(3) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than \$75,000,000, shall occupy a leased area of the qualified business facility that represents at least \$25,000,000 of the capital investment in the facility at which the tenant business shall employ not fewer than 250 full-time employees to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility.

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), or if the business is a licensee as defined pursuant to section 33 of P.L.1977, c.110 (C.5:12-33). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

(5) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(6) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility.

b. A business shall apply for the credit within five years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and a business shall submit its documentation for approval of its credit amount within eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.).

c. (1) The amount of credit allowed shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business' leased area, and shall be taken over a 10-year period, at the rate of one-tenth of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the commission as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the commission. In conducting its annual review, the commission may

require a business to submit any information determined by the commission to be necessary and relevant to its review.

The credit amount for any tax period ending after the date eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) during which the documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy of the qualified business facility for the tax period.

(2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), pursuant to N.J.S.17B:23-5, or pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

d. (1) If, in any tax period, fewer than 200 full-time employees of the business at the qualified business facility are employed in new full-time positions, the amount of the credit otherwise determined pursuant to final calculation of the award of tax credits pursuant to subsection c. of this section shall be reduced by 20 percent for that tax period and each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the commission, for which tax period and each subsequent tax period the full amount of the credit shall be allowed; provided, however, that there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality. For the purposes of this paragraph, a "new full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State.

(2) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 10 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), or in the last tax accounting or privilege period prior to the credit amount approval under this section, whichever is greater, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business' Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the commission, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(3) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility located in an urban transit hub within an eligible municipality drops below 250 then the business shall forfeit its credit amount for that tax period and each

subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 has been reviewed and approved by the commission, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(4) (i) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(ii) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

e. The Executive Director of the New Jersey Commerce Commission, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement this act, including but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

4. This act shall take effect immediately.

Approved January 13, 2008.