

**CHAPTER 12**  
**(CORRECTED COPY)**

**AN ACT** concerning certain unused portions of tax credits issued to insurance premiums taxpayers under the Business Employment Incentive Program and exempting certain purchasers of business development incentives from certain State tax notification requirements, amending P.L.1996, c.26, P.L.1966, c.30, and P.L.2007, c.100.

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

1. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read as follows:

C.34:1B-129 Employment incentive grant criteria; tax credit transfer certificate.

6. a. The amount of the employment incentive awarded as a grant by the authority shall either be awarded in cash or as a tax credit. In each case, the amount of the grant shall be not less than 10 percent and not more than 50 percent of the withholdings of the business, or not less than 10 percent and not more than 30 percent of the estimated tax of the partners of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of the partner's account, or any combination thereof, and shall be subject to the provisions of sections 10 and 11 of P.L.1996, c.26 (C.34:1B-133 and C.34:1B-134). In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of \$50,000 for all new employees over the term of the grant. The employment incentive shall be based on criteria developed by the authority after considering the following:

- (1) The number of eligible positions to be created;
- (2) The expected duration of those positions;
- (3) The type of contribution the business can make to the long-term growth of the State's economy;
- (4) The amount of other financial assistance the business will receive from the State for the project;
- (5) The total dollar investment the business is making in the project;
- (6) Whether the business is a designated industry;
- (7) Impact of the business on State tax revenues; and
- (8) Such other related factors determined by the authority.

b. A business may be eligible to be awarded a grant, either in cash or in tax credits, of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies, and policies of the State Development and Redevelopment Plan, established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200), as determined by and based upon criteria promulgated by the authority following consultation with the Office of State Planning in the Department of State.

c. The term of the grant shall not exceed 10 years.

d. At the discretion of the authority, the grant may apply to new employees or partners in eligible positions created during the base years, and during the remainder of the term of the grant.

e. Within 180 days of the date of enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), a business that was approved for a grant prior to the enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), may direct the authority to convert the grant to a tax credit against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), 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. The direction to convert the grant to a tax credit shall be irrevocable. An approved tax credit shall be issued in the manner and for the amounts as follows and may only be applied in the tax period for which they are issued and shall not be carried forward:

(1) For grants accrued but not paid during calendar years 2008 through 2013, the tax credit shall be equal to an approved amount and shall be issued in five installments over a five-year period beginning in the 2017 tax accounting or privilege period of the business or tax credit transferee in the following percentages: in year one, five percent of the accrued amount; in year two, 20 percent of the accrued amount; in year three, 25 percent of the accrued amount; in year four, 25 percent of the accrued amount; in year five, 25 percent of the accrued amount. To the extent any amount in this paragraph has not been approved by the authority by the commencement of State fiscal year 2017, the aggregate tax credit that would have been issued in State fiscal year 2017 shall be issued in the year the amount is approved and the five-year period shall commence in that fiscal year;

(2) For a grant accrued but not paid during calendar year 2014, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(3) For a grant accrued but not paid during calendar year 2015, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(4) For a grant accrued but not paid during calendar year 2016, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(5) For a grant accrued but not paid during calendar year 2017, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(6) For a grant accrued but not paid during calendar year 2018, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(7) For a grant accrued but not paid during calendar year 2019, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(8) For a grant accrued but not paid during calendar year 2020, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(9) For a grant accrued but not paid during calendar year 2021, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(10) For a grant accrued but not paid during calendar year 2022, the tax credit shall be equal to any approved amount and shall be paid in two equal installments over a two-year

period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(11) For a grant accrued but not paid during calendar year 2023, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(12) For a grant accrued but not paid during calendar year 2024, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee; and

(13) For a grant accrued but not paid during calendar year 2025, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee.

f. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, prior to all other credits and payments. If the credit exceeds the amount of tax liability otherwise due from a business that pays taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, that amount of excess shall be an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

g. (1) A business that does not pay taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), 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 may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(2) A business that has received a tax credit pursuant to subsection e. of this section, which credit exceeds the amount of the tax liability otherwise due, may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(3) Upon the executive director's approval of an application for a tax credit transfer certificate, the division shall review and issue the tax credit transfer certificate. The tax credit transfer certificate, upon receipt thereof by the business, may be sold or assigned, in full or in part, in an amount not less than \$100,000, or the amount of the refundable tax credit issued if less than \$100,000, of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), 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. The tax credit transfer certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same privileges, limitations, and conditions that apply to the use of the credit by the business that originally applied for and was allowed the tax credit, including treating the amount of excess as an overpayment under subsection f. of this section. The tax credit transferee may not transfer its tax credit to any other party.

2. Section 22 of P.L.1966, c.30 (C.54:32B-22) is amended to read as follows:

C.54:32B-22 Proceedings to recover tax.

22. (a) Whenever any person required to collect tax shall fail to collect or pay over any tax, penalty or interest imposed by this act as therein provided, or whenever any customer shall fail to pay any such tax, penalty or interest, the Attorney General shall, upon the request of the director, bring or cause to be brought an action to enforce the payment of the same on behalf of the State of New Jersey in any court of the State of New Jersey or of any other State or of the United States.

(b) As an additional or alternate remedy, the director may issue a warrant, directed to the sheriff of any county commanding him to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the director and to pay to him the money collected by virtue thereof within 60 days after the receipt of such warrant. The sheriff shall within 5 days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the director a warrant of like terms, force and effect may be issued and directed to any officer or employee of the Division of Taxation, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the director may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the State had recovered judgment therefor and execution thereon had been returned unsatisfied.

(c) Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least 10 days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the director by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this act, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the director as required by the preceding paragraph, or whenever the director shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the State, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money,

property or choses in action to the extent of the amount of the State's claim. For failure to comply with the provisions of this section the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of the uniform commercial code, Title 12A of the New Jersey Statutes, shall be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller, transferrer or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this act.

(d) Subsection (c) of this section shall not apply to the sale, transfer, or assignment of a grant, tax credit, or tax credit transfer certificate that has been awarded, issued, or otherwise made available to a person required to collect tax in connection with a State or local business assistance or incentive program or activity authorized by law in effect on the effective date of P.L.2017, c.12.

For purposes of this subsection, "State or local business assistance or incentive program or activity" includes but shall not be limited to: the corporation business tax credit and insurance premiums tax credit certificate transfer program established by section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business Retention and Relocation Assistance Program established by P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment Incentive Program established by P.L.1996, c.26 (C.34:1B-124 et al.); the Urban Transit Hub Tax Credit Program established by P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey Assistance Program established by section 3 of P.L.2011, c.149 (C.34:1B-244); and the State or local Economic Redevelopment and Growth Grant program established by section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

3. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to read as follows:

C.54:50-38 Notification to director of proposed sale, transfer, assignment of business assets; claim for State taxes; exemptions.

5. a. (1) Whenever a person shall make a sale, transfer, or assignment in bulk of any part or the whole of the person's business assets except as provided by paragraph (2) of this subsection, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall, at least 10 days before taking possession of the subject of the sale, transfer or assignment, or paying therefor, notify the director by registered mail, or other such method as the director may prescribe, of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor has represented to, or informed the purchaser, transferee or assignee that the seller, transferrer or assignor owes any State tax and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing. Within 10 days of receiving such notice, the director shall notify the purchaser, transferee or assignee by such means as the director may prescribe that a possible claim for State taxes exists and include the amount of the State's claim.

(2) (a) Paragraph (1) of this subsection shall not apply to the sale, transfer or assignment of a simple dwelling house if the seller, transferrer or assignor is an "individual," "estate," or "trust" as those terms are used for the purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; paragraph (1) shall apply to the sale, transfer or assignment of a simple dwelling house if the seller, transferrer or assignor is a business entity, including but not limited to a corporation or a partnership. "Simple dwelling house" means a dwelling unit, attached or detached, and land appurtenant thereto, including but not limited to a one-family or two-family building or structure, a unit of a horizontal property regime established

pursuant to the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined under "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et seq.), or a unit of a condominium property established pursuant to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), but does not include a structure or structures containing more than two units of dwelling space or containing, according to the records of the municipal property tax assessor, commercial property including, or in addition to, the units of dwelling space.

(b) Paragraph (1) of this subsection shall not apply to the sale, transfer or assignment of a seasonal rental unit or the sale, transfer or assignment of a lease for the seasonal use or rental of real property if the seller, transferrer or assignor is an "individual," "estate," or "trust" as those terms are used for the purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; paragraph (1) shall apply to the sale, transfer or assignment of a seasonal rental unit or the sale, transfer or assignment of a lease for the seasonal use or rental of real property if the seller, transferrer or assignor is a business entity, including but not limited to a corporation or a partnership.

For the purposes of this paragraph:

"seasonal rental unit" means

(i) a "timeshare estate" as that term is defined by section 2 of P.L.2006, c.63 (C.45:15-16.51); and

(ii) a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere; and

"lease for the seasonal use or rental of real property" means

(i) a "timeshare use" as that term is defined by section 2 of P.L.2006, c.63 (C.45:15-16.51); and

(ii) the use or rental for a term of not more than 125 consecutive days for residential purposes by a person having a permanent place of residence elsewhere.

(3) Paragraph (1) of this subsection shall not apply to the sale, transfer, or assignment of a grant, tax credit, or tax credit transfer certificate that has been awarded, issued, or otherwise made available to a person in connection with a State or local business assistance or incentive program or activity authorized by law in effect on the effective date of P.L.2017, c.12.

For purposes of this paragraph, "State or local business assistance or incentive program or activity" includes but shall not be limited to: the corporation business tax credit and insurance premiums tax credit certificate transfer program established by section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business Retention and Relocation Assistance Program established by P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment Incentive Program established by P.L.1996, c.26 (C.34:1B-124 et al.); the Urban Transit Hub Tax Credit Program established by P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey Assistance Program established by section 3 of P.L.2011, c.149 (C.34:1B-244); and the State or local Economic Redevelopment and Growth Grant program established by section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

b. If, upon receiving timely notice of a sale, transfer or assignment from a purchaser, transferee or assignee, the director fails to provide timely notice to the purchaser, transferee or assignee that a possible claim for such State tax or taxes exists, the purchaser, transferee or assignee may transfer over to the seller, transferrer or assignor any sums of money, property or choses in action, or other consideration to the extent of the amount of the State's claim. The purchaser, transferee or assignee shall not be subject to the liabilities and remedies imposed under the provisions of the uniform commercial code, Title 12A of the

New Jersey Statutes, and shall not be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller, transferrer or assignor.

c. If the purchaser, transferee or assignee shall fail to give notice to the director as required by the preceding paragraph, or if the director shall inform the purchaser, transferee or assignee that a possible claim for such State tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such State taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the State, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the State's claim. For failure to comply with the provisions of this section the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of the uniform commercial code, Title 12A of the New Jersey Statutes, shall be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller, transferrer or assignor, and such liability may be assessed and enforced in the same manner as the liability for any State tax under the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

4. This act shall take effect immediately; provided, however, that section 1 shall apply retroactively to January 11, 2016.

Approved February 6, 2017.