

§5219-VV. Credit for major food processing and manufacturing facility expansion

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Base level of employment" means the greater of:

(1) The total employment of a qualified applicant as of the March 31st, June 30th, September 30th and December 31st immediately preceding the application for a certificate of approval under subsection 2 divided by 4; and

(2) The qualified applicant's average employment during the base period. [PL 2019, c. 386, §2 (NEW).]

B. "Base period" means the 3 calendar years prior to the year in which a qualified applicant's application for a certificate of approval under subsection 2 is approved by the commissioner. [PL 2019, c. 386, §2 (NEW).]

B-1. "Catastrophic occurrence" means a fire, flood, hurricane, windstorm, earthquake or other similar event that is not within the control of a business to prevent. [PL 2023, c. 173, §4 (NEW).]

C. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this section. [PL 2019, c. 386, §2 (NEW).]

D. "Commissioner" means the Commissioner of Economic and Community Development. [PL 2019, c. 386, §2 (NEW).]

E. "Employees based in the State" means employees that perform 100% of employee-related activities for the employer at the facility in the State. [PL 2019, c. 386, §2 (NEW).]

F. "Facility" means a food processing and manufacturing facility, plant or mill, including one or more structures and including the equipment, machinery, fixtures and personal property located in, on, over, under and adjacent to those structures, by which the applicant, as determined by the commissioner, processes, produces and manufactures food from agricultural products primarily grown and harvested in the State. [PL 2019, c. 659, Pt. H, §1 (AMD).]

G. "Full-time" means an average of at least 36 hours weekly during the period of measurement. [PL 2019, c. 386, §2 (NEW).]

H. "Headquarters" means the principal office from which a qualified applicant directs its national or global business activities, as determined by the commissioner at the time of application. [PL 2019, c. 386, §2 (NEW).]

I. "Primarily grown and harvested in the State" means that not less than 95% of the agricultural products processed in the facility are grown and harvested in the State, except when such products are not reasonably available by reason of an act of God, pestilence, weather or other factors beyond the reasonable control of the applicant or applicant's suppliers. [PL 2019, c. 386, §2 (NEW).]

J. "Qualified applicant" means an applicant that, at the time an application for a certificate of approval is submitted, is itself, or is the parent or subsidiary of, an entity that satisfies all of the following criteria:

(1) The applicant's headquarters are, and have been for each of the last 5 years prior to application for a certificate of approval, located in the State;

(2) The applicant intends to make a qualified investment in the State within 5 years following the date of the application;

(3) Construction of the applicant's facility begins no sooner than April 1, 2019 as evidenced by the date of issuance of an appropriate municipal building permit;

(4) The applicant employs or will employ upon start-up of the facility at least 40 full-time employees based in the State; and

(5) The annual income derived from employment with the applicant of at least 75% of the applicant's employees exceeds the most recent annual per capita personal income in the county in which the facility is located. [PL 2019, c. 386, §2 (NEW).]

K. "Qualified investment" means an expenditure of at least \$35,000,000 to design, permit, construct, modify, equip or expand the applicant's facility in the State. The expenditures of a qualified applicant and other entities, whether or not incorporated, that are part of a single business enterprise must be aggregated to determine whether a qualified investment has been made. A qualified investment does not include an expenditure made prior to April 1, 2019 or after December 31, 2024. [PL 2019, c. 659, Pt. H, §2 (AMD).]

[PL 2023, c. 173, §4 (AMD).]

2. Procedures for application; certificate of approval. The provisions of this subsection govern the procedures for providing for and obtaining a certificate of approval.

A. A qualified applicant may apply to the commissioner for a certificate of approval. An applicant shall submit to the commissioner information demonstrating that the applicant is a qualified applicant. If a certified applicant undertakes to make an additional qualified investment, the certified applicant may apply to the commissioner for an additional certificate of approval. [PL 2019, c. 386, §2 (NEW).]

B. The commissioner, within 30 days of receipt of an application submitted pursuant to paragraph A, shall determine whether the applicant is a qualified applicant and shall issue either a certificate of approval or a written denial indicating why the applicant is not qualified. The certificate issued by the commissioner must describe the qualified investment and specify the total amount of qualified investment approved under the certificate. [PL 2019, c. 386, §2 (NEW).]

C. A certified applicant shall obtain approval from the commissioner to transfer the certificate of approval or, if the certified applicant has obtained a certificate of completion under paragraph E, that certificate of completion to another person. A certificate of approval or certificate of completion may be transferred only if all or substantially all of the assets of the certified applicant are, or will be, transferred to that person or if 50% or more of the certified applicant's voting stock is, or will be, acquired by that person. The commissioner shall approve the transfer of the certificate of approval or the certificate of completion only if at least one of the following conditions is satisfied:

(1) The transferee is a member of the applicant's unitary affiliated group at the time of the transfer; or

(2) The commissioner finds that the transferee will, and has the capacity to, maintain operations of the facility in the State in a manner that meets the minimum qualifications for continued eligibility of benefits under this section after the transfer occurs.

If the commissioner approves the transfer of the certificate, the transferee, from the date of the transfer, must be treated as the certified applicant and as eligible to claim any remaining benefit under the certificate of approval or the certificate of completion that has not been previously claimed by the transferor as long as the transferee meets the same eligibility requirements and conditions for the credit as applied to the original certified applicant. [PL 2019, c. 386, §2 (NEW).]

D. The commissioner shall revoke a certificate of approval if the certified applicant or a person to whom a certificate of approval has been transferred pursuant to paragraph C fails to make a qualified investment within 5 years of the date of the certificate of approval. The commissioner shall revoke a certificate of approval or a certificate of completion under paragraph E if the

applicant or transferee ceases operations of the facility in the State or the certificate of approval or certificate of completion is transferred to another person without approval from the commissioner pursuant to paragraph C. A certified applicant whose certificate of completion is revoked within 5 years after the date issued shall return to the State an amount equal to the total credits claimed for all tax years under this section. A certified applicant whose certificate of completion is revoked during the period from 6 years after through 10 years after the date the certificate was issued shall return to the State an amount equal to the total credits claimed under this section for the period from 6 years after through 10 years after the date the certificate was issued. The amount to be returned to the State under this paragraph is, for purposes of this Title, a tax subject to the collection and enforcement provisions contained in Part 1, including the application of applicable interest and penalties. The amount to be returned to the State must be added to the tax imposed on the taxpayer under this Part for the taxable year during which the certificate is revoked. An applicant whose certificate of approval or certificate of completion has been revoked pursuant to this paragraph is not eligible for the tax credit under this section for the tax year in which the certificate is revoked and any year after that. [PL 2019, c. 659, Pt. H, §3 (AMD).]

E. A certified applicant shall submit an application to the commissioner for a certificate of completion. If the commissioner determines that the certified applicant has made a qualified investment and determines that, at the time the application for a certificate of completion is submitted, the certified applicant is itself, or is the parent or subsidiary of, an entity that satisfies all of the criteria in subsection 1, paragraph J, subparagraphs (1) and (5), the commissioner shall issue a certificate of completion to the certified applicant as soon as is practical. The certificate of completion must state the amount of qualified investment made by the certified applicant. [PL 2019, c. 659, Pt. H, §4 (AMD).]

The commissioner may not issue certificates of approval under this subsection that total, in the aggregate, more than \$100,000,000 of qualified investment or any individual certificate of approval for more than \$85,000,000 of qualified investment.

[PL 2019, c. 659, Pt. H, §§3, 4 (AMD).]

3. Refundable credit allowed. A certified applicant is allowed a credit as provided in this subsection.

A. Subject to the limitations under paragraph B, beginning with the first full tax year after the certified applicant has been issued a certificate of completion under subsection 2, paragraph E or the tax year beginning on January 1, 2022, whichever is later, and for each of the following 19 tax years, a certified applicant is allowed a credit against the tax due under this Part for the taxable year in an amount equal to 1.8% of the certified applicant's qualified investment. If the certified applicant is a pass-through entity, the owner or owners of the certified applicant are allowed the credit. The credit allowed under this paragraph is refundable. [PL 2019, c. 386, §2 (NEW).]

B. The credit under this subsection is limited as follows.

(1) A credit is not allowed for any tax year during which the taxpayer does not meet or exceed the following employment targets as measured on the last day of the tax year.

(a) For each of the first 3 tax years for which the credit is claimed, there must be a total of at least 40 full-time employees based in the State above the certified applicant's base level of employment whose jobs were added since the first day of the year in which the certificate of approval was issued.

(b) For each tax year after the 3rd tax year for which the credit is claimed, the taxpayer must employ a total of at least 60 full-time employees based in the State above the certified applicant's base level of employment whose jobs were added since the first day of the year in which the certificate of approval was issued.

Jobs for additional full-time employees that are counted for determining eligibility for the credit under one certificate of completion under subsection 2, paragraph E may not be counted for determining eligibility for the credit under a separate certificate of completion. For purposes of this subparagraph, "additional full-time employees" does not include employees who are shifted to a certified applicant's facility in the State from an affiliated business in the State. The commissioner shall determine whether a shifting of employees has occurred. For purposes of this subparagraph, "affiliated business" has the same meaning as in section 6753, subsection 1-A.

(2) A credit is not allowed for any tax year following 2 consecutive tax years during which the certified applicant did not have between \$5,500,000 and \$12,000,000 in ordinary business income.

(3) Cumulative credits under this subsection may not exceed \$30,600,000 under any one certificate.

(4) A credit is not allowed for any tax year during which the certified applicant does not satisfy all of the following criteria:

- (a) The certified applicant's headquarters are located in the State;
- (b) The certified applicant has a facility in the State; and
- (c) The annual income derived from employment with the certified applicant of at least 75% of the certified applicant's employees exceeds the most recent annual per capita personal income in the county in which the facility is located.

For purposes of this subparagraph, "certified applicant" includes the parent or subsidiary of the certified applicant. [PL 2019, c. 659, Pt. H, §5 (AMD).]

[PL 2019, c. 659, Pt. H, §5 (AMD).]

4. Appeals. The applicant or certified applicant may appeal in accordance with Title 5, chapter 375, subchapter 7 any determination, action or failure to act by the commissioner under this section. [PL 2019, c. 386, §2 (NEW).]

5. Reporting required. A certified applicant, the commissioner and the assessor are required to make reports pursuant to this subsection.

A. On or before March 1st of each year, a certified applicant shall file a report with the commissioner for the tax year ending during the immediately preceding calendar year, referred to in this subsection as "the report year," containing the following information:

- (1) The number of full-time employees based in the State of the certified applicant on the last day of the report year; and
- (2) The incremental amount of qualified investment made in the report year.

The commissioner may prescribe forms for the annual report described in this paragraph. The commissioner shall provide copies of the report to the assessor, to the Office of Program Evaluation and Government Accountability and to the joint standing committee of the Legislature having jurisdiction over taxation matters at the time the report is received. [PL 2019, c. 607, Pt. C, §7 (AMD); PL 2019, c. 659, Pt. H, §6 (AMD).]

B. By April 1st of each year, the commissioner shall report to the Office of Program Evaluation and Government Accountability and to the joint standing committee of the Legislature having jurisdiction over taxation matters aggregate data on employment levels and qualified investment amounts of certified applicants for each year that the certified applicant claimed a credit under this section. [PL 2019, c. 607, Pt. C, §7 (AMD).]

C. By December 31st of each year, the assessor shall report to the Office of Program Evaluation and Government Accountability and to the joint standing committee of the Legislature having jurisdiction over taxation matters the revenue loss during the report year as a result of this section for each taxpayer claiming the credit and, if necessary, shall include updated revenue loss amounts for any previous tax year. For purposes of this paragraph, "revenue loss" means the credit claimed by the taxpayer and allowed pursuant to this section, consisting of the amount of the credit used to reduce the tax liability of the taxpayer and the amount of the credit refunded to the taxpayer, stated separately. [PL 2019, c. 607, Pt. C, §7 (NEW).]

Notwithstanding any provision of law to the contrary, the reports provided under this subsection are public records as defined in Title 1, section 402, subsection 3.

[PL 2019, c. 607, Pt. C, §7 (AMD); PL 2019, c. 659, Pt. H, §6 (AMD).]

6. Rulemaking. The commissioner may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement this section.

[PL 2019, c. 386, §2 (NEW).]

7. Evaluation; specific public policy objectives; performance measures. The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. The Office of Program Evaluation and Government Accountability shall submit an evaluation of the credit provided under this section to the joint legislative committee established to oversee program evaluation and government accountability and the joint standing committee of the Legislature having jurisdiction over taxation matters. In developing evaluation parameters to perform the review, the office shall consider:

A. That the specific public policy objectives of the credit provided under this section are:

(1) To create high-quality jobs in the State by encouraging major businesses to locate or expand their food processing and manufacturing facilities in this State and to encourage the recruitment and training of employees for these facilities; and

(2) To directly and indirectly improve the overall economy of the State including the agricultural economy, small businesses, employment in rural areas and expansion of the tax base; and [PL 2019, c. 386, §2 (NEW).]

B. Performance measures, including, but not limited to:

(1) The number, geographic distribution and income of full-time employees added or retained during a period being reviewed who would not have been added or retained in the absence of the credit;

(2) The number and amount of qualified investments made by certified applicants during the review period;

(3) The increase in value in agricultural products produced in the State; and

(4) Direct and indirect economic benefits to the State attributable to qualified investments entitled to a credit under this section. [PL 2019, c. 386, §2 (NEW).]

[PL 2019, c. 386, §2 (NEW).]

8. Catastrophic occurrence; benefits. A certified applicant may apply for an adjustment of the base level of employment as described in this section if it has sustained at least a 15% loss of employed workers due to a catastrophic occurrence. For the purposes of this section, the base level of employment may be adjusted to subtract the reduction in employment at the locations affected by the catastrophic occurrence to the extent that the employment was included in the base level of employment at the time of application for a certificate of approval under subsection 2. A certified applicant must apply for an adjustment of the base level of employment within 2 calendar years of the catastrophic occurrence.

[PL 2023, c. 173, §5 (NEW).]

SECTION HISTORY

PL 2019, c. 386, §2 (NEW). PL 2019, c. 607, Pt. C, §7 (AMD). PL 2019, c. 659, Pt. H, §§1-6 (AMD). PL 2023, c. 173, §§4, 5 (AMD).

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