**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**
**RHODE ISLAND DIVISION OF TAXATION**
**NOTICE OF RULE-MAKING**

Pursuant to the provisions of R.I. Gen. Laws § 42-35-3, as amended, the Rhode Island Division of Taxation ("Division of Taxation") in conjunction with the Rhode Island Commerce Corporation (the "Corporation") hereby gives notice of its intent to adopt rules and regulations, entitled **Rules and Regulations for the Rhode Island Qualified Jobs Incentive Act of 2015** (the "Rules").

The Rules implement the newly-enacted Rhode Island Qualified Jobs Incentive Act of 2015, R.I. Gen. Laws § 44-48.3-1 *et seq.,* which provides tax credits to qualifying business for new full-time jobs created in Rhode Island. To qualify, a business in a "targeted" industry must create a minimum of 10 new jobs and, if it has more than 100 employees in the state, it needs to create jobs equal to either 10% of their workforce in state or 100 employees. A business in a "non-targeted" industry must create a minimum of 20 new jobs, and, if it has more than 200 employees in the state, it needs to create jobs equal to either 10% of its workforce or 100 new jobs. The jobs must pay, at a minimum, the median hourly wage for the state, though the Corporation may exempt economically fragile industries, such as manufacturing, from that requirement. The eligibility period for the credits can be up to 10 years, and the business must agree to keep the jobs in Rhode Island for at least 20% longer than the period of time it is eligible for credits. The maximum amount of the credits available per job is $7,500.

The Rules are available for public inspection at www.sos.ri.gov/ProposedRules/, www.commerceri.com, www.tax.ri.gov, in person at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by request by e-mail to Michael.Canole@tax.ri.gov, or by calling Michael Canole at (401) 574-8729.

In development of the proposed Rules consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) economic impact on small businesses. Based upon available information, the Division of Taxation has determined that there is no alternative approach that would be as effective and less burdensome nor any overlap or duplication with any other state regulation.

All interested parties are invited to submit written or oral comments concerning the proposed regulation from August 26, 2015 through no later than 4:00pm on September 25, 2015 to Michael Canole at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by request by e-mail to Michael.Canole@tax.ri.gov, or by calling Michael Canole at (401) 574-8729.

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty five (25) persons, or by an agency, or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice. Requests must be made through Michael Canole at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by request by e-mail to Michael.Canole@tax.ri.gov, or by calling Michael Canole at (401) 574-8729.

Date of Notice August 26, 2015

# Rhode Island Division of Taxation

# in conjunction with the Rhode Island Commerce Corporation

# Rules and Regulations for the Rhode Island Qualified Jobs Incentive Act of 2015

# Regulation CR 15-18

**Rhode Island Division of Taxation**
**Rhode Island Commerce Corporation**
**Rules and Regulations for the Rhode Island Qualified Jobs Incentive Act of 2015**

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**Rhode Island Division of Taxation**
**Rhode Island Commerce Corporation**
**Rules and Regulations for the Rhode Island Qualified Jobs Incentive Act of 2015**

## Rule 1. Purpose.

These rules and regulations (the "Rules") are promulgated to set forth the principles, policies and practices of the Rhode Island Commerce Corporation and the Rhode Island Division of Taxation in implementing and administering Chapter 48.3 of Title 44 of the Rhode Island General Laws, the Rhode Island Qualified Jobs Incentive Act of 2015 (the "Act").

## Rule 2. Authority.

These Rules are promulgated pursuant to Chapter 48.3 of Title 44 of the General Laws. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, Chapter 35 of Title 42 of the General Laws.

## Rule 3. Scope.

These Rules shall apply to any application for or receipt of tax credits under the Act. Notwithstanding anything contained in these Rules to the contrary, the Rhode Island Commerce Corporation and the Rhode Island Division of Taxation, respectively, shall have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes, and these Rules shall be liberally construed so as to permit the Rhode Island Commerce Corporation and the Rhode Island Division of Taxation to effectuate the purposes of the Act and other applicable state laws and regulations. The Rhode Island Commerce Corporation, acting by and through its board of directors, may provide exemption from the application of such portion of these Rules as may be warranted by extenuating circumstances arising from such application.

## Rule 4. Severability.

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

## Rule 5. Definitions.

The following words and terms, when used in these Rules, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Act"** means Chapter 48.3 of Title 44 of the General Laws known as the Rhode Island Qualified Jobs Incentive Act of 2015.

(2) **"Affiliate"** means an entity that directly or indirectly controls, is under common control with, or is controlled by the Applicant. Control exists in all cases in which the entity is a member of an affiliated group of corporations as defined pursuant to § 1504 of the Internal Revenue Code of 1986 (26 U.S.C. § 1504) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of § 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). An Affiliate or an Applicant may establish by clear and convincing evidence, as determined by the Corporation, that control exists in situations involving lesser percentages of ownership than required by those statutes. An Affiliate of the Applicant may contribute to meeting Full-Time Employee requirements of an Applicant that applies for a Tax Credit under the Act and these Rules.

(3) **"Allocation Agreement"** means an executed agreement among all Participants of a Pass-Through Entity setting forth the method for allocation of the Tax Credit agreed upon among the Participants. An Allocation Agreement may include, without limitation, a partnership

agreement, an operating agreement of a limited liability company, a shareholders agreement, or any other instrument executed by all Participants.

(4) **"Annual Certification"** means the document issued annually to an Applicant certifying to the Tax Division the amount of the Tax Credit and taxable year in which such credit may be claimed, and such other information deemed appropriate by the Corporation.

(5) **"Applicant"** means a Business applying for a Tax Credit under the Act and these Rules.

(6) **"Application"** means the application, promulgated by the Corporation, which must be completed and submitted by an Applicant pursuant to the requirements of the Act and these Rules.

(7) **"Assignee"** means a Person to whom a Tax Credit Certificate is assigned pursuant to these Rules.

(8) **"Assignor"** means a holder of a Tax Credit Certificate who assigns such Tax Credit Certificate to an Assignee.

(9) **"Board"** means the board of directors of the Corporation.

(10) **"Business"** means a corporation, state bank, federal savings bank, trust company, national banking association, bank holding company, loan and investment company, mutual savings bank, credit union, building and loan association, insurance company, investment company, broker-dealer company or surety company, limited liability company, partnership or sole proprietorship qualified to do business in the State.

(11) **"Capital Investment"** means expenses for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, including reasonable associated soft costs

and the reasonable costs of relocating any former tenants; obtaining and installing furnishings and machinery, apparatus, or equipment, including as permitted in the sole discretion of the Corporation, but not limited to, material goods for the operation of a business on real property or in a building, structure, facility, or improvement to real property; site-related utility and transportation infrastructure improvements including on- and off-site utility, road, pier, wharf, bulkhead or sidewalk construction or repair; plantings or other environmental components required to attain the level of silver rating or above in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System; and environmental remediation of the Project site.

(12) **"Corporation"** means the Rhode Island Commerce Corporation established pursuant to Chapter 64 of Title 42 of the Rhode Island General Laws.

(13) **"Commitment Period"** means the period of time that at a minimum is twenty percent (20%) longer than the Eligibility Period.

(14) **"Economically Fragile Industry"** means manufacturing and such other industries identified in the economic development vision and policy promulgated pursuant Section 42-64.17-1 of the General Laws as economically fragile or, until such time as any such economic development vision and policy is promulgated, as identified by the Corporation from time-to-time and published on the Corporation's website. Retail shall not be an economically fragile industry.

(15) **"Eligibility Period"** means the period in which a Business may claim a Tax Credit under the Act, beginning at the end of the tax period in which the Corporation issues a Certification for the Business that it has met the employment requirements of the Act and extending thereafter for a term of not more than ten (10) years.

(16) **"Eligible Position"** or **"Full-Time Job"** means a full-time position in a Business which has been filled with a Full-Time Employee who earns no less than the median hourly wage as reported by the United States Bureau of Labor Statistics for the State, provided, that for Economically Fragile Industries, the Corporation may reduce the wage threshold.

(17) **"Full-Time Employee"** means a natural person who is employed in the State by a Business for consideration for at least thirty-five (35) hours a week, or who is employed in the State by a professional employer organization pursuant to an employee leasing agreement between the Business and the professional employer organization for at least thirty-five (35) hours a week, and whose wages are subject to withholding.

(18) **"Hope Community"** means a municipality with a percentage of families below the poverty level that is greater than the percentage of families below the poverty level for the state as a whole as determined by the United States Census Bureau's most recent American Community Survey.

(19) **"Incentive Agreement"** means the contract between the Applicant and the Corporation that sets forth the terms and conditions under which the Applicant shall be eligible to receive the incentives authorized pursuant to the Act.

(20) **"Incentive Effective Date"** means the date the Corporation issues a certification for issuance of a Tax Credit.

(21) **"Industrial Design"** means the profession of designing products to optimize the function, value, and appearance for the benefit of the user of the product and/or the manufacturer or creator of the product.

(22) **"Initial Certificate Holder"** means an Applicant or Participant named by the Applicant to receive the Tax Credit Certificate.

(23) **"Letter of Good Standing"** means a letter from the Division of Taxation certifying that the taxpayer is in good standing for purposes of these Rules; a taxpayer shall be entitled to a letter of good standing so long as (1) the taxpayer is current on all outstanding filings and declared tax liabilities subject to audit; (2) the taxpayer and the Division of Taxation have a workout payment agreement or other settlement with respect to any known delinquent tax liability and the taxpayer is current on that workout payment agreement or settlement; or (3) the taxpayer has timely commenced or is engaged in an administrative or judicial proceeding concerning a tax liability the status of which would otherwise preclude the issuance of a letter of good standing;

(24) **"New Full-Time Job"** means an Eligible Position created by the Applicant that did not previously exist in the State. The term "New Full-Time Job" does not include a position that is the result of an acquisition of an existing company located in the State by purchase, merger, or otherwise; or a position that is or was already located in the State regardless of the taxpayer for whom the individual performed services. For the purposes of determining the number of new Full-Time Jobs, the Eligible Positions of an Affiliate shall be considered Eligible Positions of the Applicant.

(25) **"Notification of Assignment"** means the notification filed with the Division of Taxation of the assignment of all or a portion a Tax Credit.

(26) **"Participant"** means a partner in a partnership, member of a limited liability company, shareholder of an S-corporation, beneficial owner of a trust, or any other Person having an interest in a Pass-Through Entity.

(27) **"Partnership"** means an entity classified as a partnership for federal income tax purposes.

(28) **"Pass-Through Entity"** means a partnership, limited liability company, S-corporation, association, nominee trust, or any other entity, the tax attributes of which are passed through to the Participants in such entity.

(29) **"Percentage Interest"** means the Percentage Interest in the Tax Credit allocated to a Participant or another Person pursuant to the terms of the applicable Allocation Agreement.

(30) **"Person"** means any natural person, partnership, firm, corporation, (including both business and non-profit corporations), limited liability company, trust, estate, association, or other business entity.

(31) **"Related Company"** means any entity controlling, controlled by or under common control with an Applicant.

(32) **"Scientific Research and Development"** means conducting research and experimental development in the physical, engineering, and life sciences, including but not limited to agriculture, electronics, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, manufacturing, mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects.

(33) **"State"** means the state of Rhode Island and Providence Plantations.

(34) **"Targeted Industry"** means any advanced, promising or otherwise prioritized industry identified in the economic development vision and policy promulgated pursuant section 42-64.17-1 of the General Laws or, until such time as any such economic development vision and policy is promulgated, as identified by the Corporation from time-to-time and published on the Corporation's website.

(35) **"Tax Administrator"** means the individual within the Rhode Island Department of Revenue as described in Section Chapter 1 of Title 44 of the General Laws.

(36) **"Tax Credit"** means a tax credit granted under the Act.

(37) **"Tax Credit Certificate"** or **"Certificate"** means a certificate issued by the Tax Division to the Applicant who has received an Annual Certification from the Corporation substantiating compliance with an Incentive Agreement and entitlement to the issuance of Tax Credits under the Act. If the Applicant is a Pass-Through Entity, a Tax Credit Certificate may be issued to each Participant in the Pass-Through Entity. The Certificate shall specify the amount of the Tax Credit allocable to such Participant, determined pursuant to these Rules.

(38) **"Tax Division"** means the Rhode Island Division of Taxation.

(39) **"Taxpayer"** means the Applicant granted a Tax Credit under this chapter or such person entitled to the Tax Credit because the Business is a Pass-Through Entity.

(40) **"Transit Oriented Development Area"** means either of:

(i) an area that the Corporation, after consultation with the Rhode Island Department of Transportation and the Rhode Island Public Transit Authority, designates as a Transit Oriented Development Area because it supports, or has the potential to support, development that is in close proximity to, compatible with, and supportive of public transit; such discretionary designation can occur in response to an Application for an incentive under the Act or in a request submitted by a municipality to the Corporation in a form prescribed by the Corporation on its website; or

(ii) an area with ready access to freight rail, air, and/or marine transportation where manufacturing, warehousing, distribution, and freight forwarding operations are or could be located.

**Rule 6. Eligibility.**

(a) The minimum number of New Full-Time Jobs required for an Applicant to be eligible for a Tax Credit under the Act shall be as follows:

(1) for a Business in a Targeted Industry that employs not more than one hundred (100) Full-Time Employees in the State on the date of Application, the creation of at least ten (10) New Full-Time Jobs;

(2) for a Business in a Targeted Industry that employs more than one hundred (100) Full-Time Employees in the State on the date of Application, the lesser of the creation of New Full-Time Jobs in this State in an amount not less than ten percent (10%) of the Business's existing number of Full-Time Employees in the State or the creation of at least one hundred (100) New Full-Time Jobs;

(3) for a Business that is not in a Targeted Industry that employs not more than two hundred (200) Full-Time Employees in this State on the date of Application to the Corporation, the creation of at least twenty (20) New Full-Time Jobs; or

(4) for a Business that is not in a Targeted Industry that employs more than two hundred (200) Full-Time Employees in this State on the date of Application, the lesser of the creation of New Full-Time Jobs in an amount not less than ten percent (10%) of the Business's existing number of Full-Time Employees in this State or the creation of at least one hundred (100) New Full-Time Jobs.

(b) An Applicant who closes or substantially reduces an operation at one location in the State and relocates substantially the same operation to another location in the State is not eligible for Tax Credits under the Act for the jobs relocated as a result of the relocation. This does not prohibit an Applicant from expanding its operations at another location in the State,

provided that existing operations of a similar nature located within the State of the Applicant or a Related Company are not closed or substantially reduced within the one year preceding the date of the Application.

(c) An Applicant shall not be eligible for a Tax Credit if an actual or likely future federal procurement is a cause of substantially all of the hours to be worked by the New Full-Time Jobs identified in an Application, unless the Applicant can show that it could reasonably and efficiently locate the New Full-Time Jobs outside of the State, that such location would be economically advantageous, and that such location would be consistent with the terms of the federal procurement. A likely future federal procurement includes, but is not limited to, a federal procurement that has been applied for or formally solicited, or an existing federal procurement for which there is a likelihood of renewal.

## Rule 7. Successive Applications.

The Corporation shall not enter into a new Incentive Agreement with an Applicant that has previously received incentives pursuant to the Act, unless the Applicant has satisfied all of its obligations underlying the previous award of incentives, and the New Full-time Jobs pledged by the Applicant in the new Incentive Agreement are in addition to the jobs created by the Applicant under any prior Incentive Agreement.

## Rule 8. Combination with Other Jobs Benefits.

The incentives provided under the Act shall not be granted in combination with any other job specific benefit provided by the State, the Corporation, or any other State agency, board,

commission, quasi-public corporation or similar entity without the express authorization of the Corporation.

## Rule 9. Application.

The Application promulgated by the Corporation shall require submission of the following information from each Applicant:

(a) The name and address of the Applicant and contact information for the individual(s) primarily responsible for oversight and management of the Application.

(b) The federal and state tax identification numbers for the Applicant;

(c) The total number of Full-Time Employees in the State as of the date of the Application, as well as the average monthly total number of Full-Time Employees in the State for the preceding 12 months for the Applicant and any Related Companies;

(d) A brief description of any existing operations and locations of the Applicant and any Related Companies in the State;

(e) Job creation information, including information on all Affiliates contributing Full-Time Employees for purposes of the Application, which shall include the following:

(1) the address(es) of the location(s) of the New Full-Time Jobs, along with documentary evidence of existing or anticipated control over such location(s), such as proof of ownership, a purchase and sale agreement, a lease, or a letter of intent;

(2) a description of any actual or likely future federal procurement that will result in the hiring of Full-Time Employees;

(3) a detailed description of the number of New Full-Time Jobs to be created unrelated to any federal procurement and the occupations of and compensation for the New Full-

Time Jobs to be created, and a schedule of anticipated starting dates of new hires;

(4) a detailed description of the number of New Full-Time Jobs to be created related to any federal procurement and the occupations of and compensation for the New Full-Time Jobs to be created, and a schedule of anticipated starting dates of new hires;

(5) the employer identification or social security numbers for all Related Companies of the Applicant that employ persons in this State, and a clear and detailed presentation of the operations of those Related Companies to assure the Corporation that the New Full-Time Jobs are not being transferred from a Related Company within the State;

(6) evidence demonstrating that without a Tax Credit the creation of the New Full-Time Jobs would not occur in this State, which may include, but is not limited to:

(i) a financial analysis, supported by appropriate documentation, showing that the receipt of the Tax Credit under the Act is necessary to make the creation of the New Full-Time Jobs feasible in this State, such as a financial analysis using best available data showing that, without the credit provided under the Act, it is not feasible for the Applicant to create the New Full-Time Jobs in this State or it is economically more beneficial for the Applicant to create the New Full-Time Jobs out of State; such analysis shall take into account the transaction costs of relocating to or from another state;

(ii) evidence that the Applicant could reasonably and efficiently locate outside of the State, which may, for example, include a proposed lease, proposed purchase and sale agreement, a real estate term sheet, prospective offer or offer letter, a term sheet concerning an out of state facility, or an incentive letter or incentive term sheet from another state.

(7) a delineation of any other State or municipal incentives, grants, tax credits, or other aid that will or may be received or requested by the Applicant in relation to creation of the

New Full-Time Jobs, including, but not limited to, in relation to the construction, acquisition, lease, or investment in property that facilitates the creation of the New Full-Time Jobs;

(8) if the Applicant seeks an increase in the Tax Credit amount on the basis of a Capital Investment pursuant to Rule 13(a)(8), a detailed description of the Capital Investment the Applicant will make including the estimated amount of such investment supported by documentary evidence, and the location(s) at which such investment will be made; and

(9) any other necessary and relevant information as determined by the Corporation.

(f) A certification from the Applicant's chief executive officer, or equivalent officer, attesting under oath:

(1) That any projected creation of New Full-Time Jobs would not occur, or would not occur in the State, but for the provision of Tax Credits under the Act;

(2) The Applicant will create New Full-Time Jobs in an amount equal to or greater than the anticipated number of New Full-Time Jobs set forth in the Application; and

(3) That the attesting officer has reviewed the information submitted to the Corporation and that the representations contained therein are accurate and complete.

(g) A signed authorization allowing the Tax Division and the Corporation to share information and to permit the Rhode Island Department of Labor and Training to share information with the Corporation, executed by a person with authority to act on the Applicant's behalf in this regard. Any records, data or information made available or received by the Corporation and/or the Tax Division from any non-public source related to the creation of the New Full-Time Jobs or the Applicant shall be kept in confidence and protected from disclosure to the extent permissible under the Access to Public Records Act, Chapter 2 of Title 38 of the General Laws, unless the Applicant otherwise consents.

**Rule 10. Fees.**

(a) An Applicant may be charged a one-time, non-refundable application fee by the Corporation and fees for ongoing administration in relation to Tax Credits for the Applicant approved by the Board. The Corporation shall annually publish a fee schedule on its website commencing on or before December 31, 2015.

(b) An Application may be required to pay to the Corporation the full amount of direct fees and costs paid to third-parties by the Corporation in relation to the consideration and/or approval of Tax Credits for the Applicant.

**Rule 11. Review Process.**

(a) Each Application shall be reviewed to confirm compliance with the Act and these Rules, and the Corporation may reject any incomplete or deficient Application.

(b) The Corporation may require the submission of additional information in connection with any Application or the revision of an Application, and may permit the resubmission of an Application rejected as being incomplete or deficient.

(c) After submission of a complete Application and review by the Corporation in accordance with the Act and these Rules, the Corporation will determine whether to recommend to the Board that it approve a Tax Credit for the Applicant and the amount of the Tax Credit. Factors considered in formulation of the recommendation may include:

(1) the number of New Full-Time Jobs created;

(2) the compensation for the New Full-Time Jobs created including benefits;

(3) the length of the Commitment Period;

(4) whether the New Full-Time Jobs created are in a Targeted Industry;

(5) whether the New Full-Time Jobs are created in a Hope Community;

(6) the amount of any Capital Investment made in connection with the creation of the New Full-Time Jobs;

(7) the strategic importance of the Applicant's business; and

(8) the economic return to the State.

(d) If the Corporation determines that it will not recommend a complete Application to the Board for approval of an incentive, it shall notify the Applicant in writing of such decision.

(e) The Corporation may set periodic Application deadlines that will be published on the Corporation's web site from time to time.

## Rule 12. Discretion and Judicial Review.

(a) The Corporation shall not have any obligation to make any award or grant any benefits under the Act or these Rules.

(b) A review of an Application shall not constitute a "contested case" under the Administrative Procedures Act, Section 42-35-9 of the General Laws, and no opportunity to object to an Application shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation or the Board in connection with any Application.

## Rule 13. Determination of Tax Credit Amount.

The amount of the Tax Credit allowed for each New Full-Time Job shall be determined as set forth in this Rule.

(a) For an Applicant for whom the Board approves Tax Credits prior to the Board approving Tax Credits for a cumulative total of 500 New Full-Time Jobs, the annual amount of

the Tax Credit for said Applicant for each New Full-Time Job shall be $7,500; otherwise, the annual base amount of the Tax Credit for each New Full-Time Job shall be $2,500 and may be increased by the amount indicated, up to an additional $5,000, if any of the following priority criteria, or other criteria determined by the Corporation from time-to-time in response to evolving economic or market conditions, are met:

(1) For a Business with New Full-Time Jobs with a median salary in excess of 110 percent of the existing median hourly wage as reported by the United States Bureau of Labor Statistics for the State, an increase of $300 per year for each ten percent by which the median salary levels exceeds the existing median hourly wage;

(2) For a New Full-Time Job in a Targeted Industry, an increase of up to $5,000 per year;

(3) For a New Full-Time Job located within a Hope Community, an increase of $1,000 per year;

(4) For a New Full-Time Job that is created by virtue of an out-of-state business relocating a business unit or units to the State, an increase of up to $5,000 per year;

(5) For the creation of a significant number of New Full-Time Jobs prior to the receipt of any Tax Credits, an increase pursuant to the following schedule:

(i) For 50 to 100 New Full-Time Jobs, an increase of up to $3,000 per year;

(ii) For 101 to 249 New Full-Time Jobs, an increase of up to $4,000 per year;

(6) For 250 or more New Full-Time Jobs, an increase of up to $5,000 per year;

(7) For a New Full-Time Job located in a Transit Oriented Development Area, an increase of $1,000 per year, provided that if the New-Full Time Job is located within one-half of

one mile of T.F. Green Airport, Quonset Business Park, or a passenger rail station, an increase of up to $4,000 per year;

(8) For an Applicant that creates 25 or more New Full-Time Jobs at a location where the Applicant has made a Capital Investment of $5,000,000 or more in connection with the creation of New Full-Time Jobs at that location, the total Tax Credit amount per New Full-Time Job created at the location shall be increased by $1,000 per year for each $5,000,000 in Capital Investment made by the Applicant;

(9) For new New Full-Time Jobs created on land that, as of July 1, 2015, was owned by the I-195 Redevelopment District Commission, an increase of up to $5,000 per year;

(10) For new New Full-Time Jobs that align with the academic mission of a college or university in the State, an increase of $2,500 per job; such alignment can be shown by, for example, a technology transfer from the college or university to the business; funding scholarships or facilities or experiential learning opportunities; or hiring a significant number of school graduates;

(11) For New Full-Time Jobs created in Scientific Research and Development or Industrial Design, an increase of $5,000 per job.

(b) Notwithstanding any other provision of these Rules, the total Tax Credit amount shall be calculated and credited to the Applicant annually for each year of the Eligibility Period after the Corporation, in consultation with the Tax Division, has verified that the amount of Tax Credits available to be obtained by the Applicant for any year shall not exceed the reasonable W-2 withholding received by the State in that year for each new Full-Time Job created by the Applicant.

(c) The Board shall retain the discretion to determine that the Applicant shall receive credits in a number or amount less than the amounts prescribed pursuant to Subsections (a) and (b) of this Section, if the Corporation determines that the number of anticipated New Full-Time Jobs or Capital Investment is unrealistic given the operating history and resources of the Applicant.

## Rule 14. Board Approval.

In addition to those findings required under Section 42-64-10 of the General Laws, the Board shall make the following findings in connection with approval of any award of incentives under the Act and these Rules:

(a) that the Applicant has demonstrated an intention to create the requisite number of New Full-Time Jobs; and

(b) that the creation of the New Full-Time Jobs would not occur in the State but for the provision of Tax Credits.

## Rule 15. Incentive Agreement.

Upon approval of Tax Credits for an Applicant by the Board, the Corporation and the Applicant will enter into an Incentive Agreement prior to the issuance of any Tax Credit to the Applicant. In order to safeguard the expenditure of public funds and ensure that the disbursement of funds further the objectives of the Act, the Incentive Agreement shall include, among others, the following terms:

(a) A detailed description of the proposed job creation and the minimum number of New Full-Time Jobs necessary to qualify for the Tax Credit;

(b) The Eligibility Period of the Tax Credits, including the first year for which the Tax Credits may be claimed;

(c) The maximum amount of Tax Credits to be awarded;

(d) The Tax Credits shall not be issued prior to the Annual Certification by the Corporation;

(e) A requirement that the Applicant maintain in the State for the Commitment Period at least the minimum number of New Full-Time Jobs as required by the Act and these Rules;

(f) A method for the Applicant to annually certify that it has met the employment requirements of the Act for each year of the Commitment Period;

(g) A provision permitting an audit of the payroll records of the Applicant from time-to-time, as the Corporation deems necessary;

(h) A provision establishing the conditions under which the Incentive Agreement may be terminated;

(i) A provision that if, in any tax period, the Applicant reduces the total number of Full-Time Employees in its statewide workforce in the last tax period prior to the Tax Credit amount approval under this Act by more than twenty percent (20%) of the number of jobs for which a credit was granted under the Act as described in the Applicant's Incentive Agreement, then the Applicant shall forfeit all credit amounts described in the Applicant's Incentive Agreement for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the Applicant's statewide workforce to the threshold levels required by the Incentive Agreement has been reviewed and approved by the Corporation, for which tax period and each subsequent tax period the full amount of the Tax

Credit shall be allowed, so long as the Applicant maintains its statewide workforce at the levels required under this subsection;

(j) A provision that during the Commitment Period, if the Applicant ceases operations in the State or transfers more than fifty percent (50%) of the jobs for which a Tax Credit was granted under the Act to another state, the Tax Credit shall cease and the Applicant shall be liable to the State for, at a minimum, twenty percent (20%) of all tax benefits granted to the Applicant under the Act calculated from the date of the Incentive Agreement;

(k) A requirement that the Corporation is authorized to verify with the appropriate State agencies, including but not limited to the Tax Division and the Department of Labor and Training, any information required to be submitted by the Applicant;

(l) A provision specifying whether the Tax Credit may be used as a credit against personal income taxes due under Chapter 30 of Title 44;

(m) Evidence that the Applicant is in good standing with the Secretary of State and Division of Taxation at the time of execution of the Incentive Agreement; a Letter of Good Standing from the Division of Taxation shall be evidence of good standing;

(n) At the Corporation's discretion, a provision requiring the Applicant to pay the Corporation's reasonable attorneys' fees incurred in connection with the negotiation, execution and enforcement of the Incentive Agreement;

(o) Indemnification requirements;

(p) Default and remedies including events other than those set forth above, if any, that would trigger forfeiture or revocation of the awarded incentives;

(q) Reporting requirements including, but not limited to, any requirements under the Act; and

(r) Any other provisions that the Corporation determines are appropriate.

## Rule 16. Initial Certification.

(a) An Applicant shall submit documentation, in a form prescribed in the Incentive Agreement, indicating that it has met the requirements specified in the Incentive Agreement for initial certification of its Tax Credit amount within three (3) years following the date of approval of its Application by the Board. The Corporation, upon written request from the Applicant and after a finding of good cause by the Board, may grant no more than two (2) six-month extensions of the deadline for initial certification.

(b) Upon a determination that the Applicant has met the requirements specified in the Incentive Agreement, the Corporation shall issue an Annual Certification to the Applicant providing that the Applicant is entitled to a Tax Credit for a specified year in an amount determined pursuant to the Incentive Agreement.

(c) An Applicant that fails to submit documentation to the Corporation indicating that it has met the employment requirements specified in the Incentive Agreement within four (4) years of the date of the Board's approval of Tax Credits for the Applicant shall forfeit any right, claims, or entitlements to a Tax Credit pursuant to its Application and the Corporation shall terminate the Incentive Agreement with the Applicant.

(d) For the purposes of determining whether the Applicant has met the employment requirements in any given year, full-time employment for the year shall be determined as the average of the monthly full-time employment for such year.

**Rule 17. Annual Certification.**

(a) For each tax year in the Eligibility Period following the year of the initial Annual Certification, the Applicant shall submit documentation to the Corporation that it has met the requirements specified in the Incentive Agreement.

(b) The Tax Credit amount for any tax period for which documentation of an Applicant's credit amount remains uncertified as of a date one year after the closing date of that period shall be forfeited, although Tax Credit amounts for the remainder of the years of the eligibility period shall remain available to the Applicant. Forfeiture of a year's credit shall not extend the eligibility period.

**Rule 18. Use of Tax Credit.**

(a) The Tax Credit allowed under the Act may be used as a credit against corporate income taxes imposed under chapters 11, 13, 14, or 17 of title 44, or as specified in the Incentive Agreement, may be used as a credit against personal income taxes imposed under chapter 30 of title 44. No more than the amount of Tax Credits equal to the total credit amount divided by the number of years in the Eligibility Period may be taken in any tax period.

(b) If the amount of the Tax Credit allowed under the Incentive Agreement exceeds the Applicant's total tax liability for the year in which the credit is allowed, the amount of such credit that exceeds the Applicant's tax liability may be carried forward and applied against the taxes imposed for the succeeding four (4) years, or until the full credit is used, whichever occurs first.

(c) Credits allowed to a Pass-Through Entity, or multiple owners of property shall be passed through to the persons designated as partners, members or owners respectively pro rata or pursuant to an executed Allocation Agreement.

## Rule 19. Issuance of Tax Credit Certificates.

(a) Upon the presentation to the Tax Division of an Annual Certification from the Commerce Corporation, the Tax Division shall issue a Tax Credit Certificate to the Applicant or any eligible Initial Certificate Holder in the amounts and for the years as agreed to in the Incentive Agreement. If the Applicant is a Pass-Through Entity, the Tax Division may issue a Tax Credit Certificate to each Participant in such Pass-Through Entity indicating on the face of such Certificate(s) the amount of the Tax Credit allocable to such Participant. The amount assigned to each Participant will be the amount represented in the Annual Certification for issuance of Tax Credit Certificates presented to the Tax Division.

(b) The amount allocated to each Participant on the Tax Credit Certificate issued to such Participant must be either (i) in proportion to the number of Participants in the Pass-Through Entity or (ii) determined in accordance with any allocation method set forth in an Allocation Agreement, which may be without regarding to their sharing of other tax or economic attributes of such entity. The Tax Division shall have no obligation to confirm the amount stated for each Participant in the Allocation Agreement.

## Rule 20. Assignment of Tax Credits.

(a) A Tax Credit Certificate may be assigned to any Person, provided that no Credit has been claimed based on the Tax Credit Certificate being assigned. The Tax Credit Certificate

may be assigned by endorsing the assignment clause set forth on the Certificate and delivery of the original Certificate to the Assignee.

(b) The Assignee may use the Tax Credit only to offset the actual tax imposed and for those taxes permitted to be offset under the Act as delineated under the Incentive Agreement for the taxable year in which the Credit is issued or for taxable years to which the Credit is permitted to be carried forward.

(c) The original executed Tax Credit Certificate shall be attached to the tax return of the Applicant, Participant or Assignee who desires to claim the Credit. A Participant of a Pass-Through Entity who transfers its interest in the entity must also endorse and deliver the Tax Credit Certificate to the transferee if the transferee desires to claim the Tax Credit.

(d) An Assignor of all or any portion of the Tax Credit, shall notify the Tax Division in writing within thirty (30) calendar days following the effective date of such assignment. Attached to such written notification (the Notification of Assignment) shall be:

(1) A copy of the Tax Credit Certificate, endorsed to the Assignee. The original Certificate shall not be included with the Notification of Assignment, which must be retained by the Assignee and attached to the Assignee's tax return for the year with respect to which the Tax Credit is claimed;

(2) The name, address and telephone number of the Assignor and of the Assignee;

(3) The taxpayer identification number or social security number of the Assignor and the Assignee; and

(4) For non-resident corporations, partnerships, limited liability companies, or other entities, the name and address of such entity's registered agent in the State of Rhode Island and evidence of qualification to do business in Rhode Island.

(e) If the holder of a Tax Credit Certificate desires to assign its interest in the Credit to more than one Assignee, the holder must, prior to utilizing any portion of the Tax Credit, request the Tax Division to reissue the original Certificate in such number of Certificates as the holder requires. The request must be made in writing, must specify the number of new Certificates required and the amount to be specified on each Certificate, and must attach the Original Certificate for cancellation by the Tax Division.

(f) The Assignor of all or a portion of the Tax Credit shall not recognize any state income tax under the provisions of Title 44 of the General Laws with respect to the proceeds of such assignment. The Assignor of any Credit shall attach a copy of the Tax Credit Certificate to its tax return to evidence that such proceeds are not subject to state income tax. If the Tax Credit is subsequently recaptured, revoked or adjusted, the Assignor's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, if any, without proration, as a modification under Chapter 30 of Title 44 of the General Laws. In the event that the Assignor is not a natural person, the Assignor's tax calculation under Chapters 11, 12, 13 (other than with respect to the tax imposed under section 44-13-13), 14, 17, or 30 of Title 44 of the General Laws, as applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds, if any, without proration.

(g) The Tax Division may charge an administrative fee for issuing multiple Tax Credit Certificates or for reissuing Certificates.

## Rule 21. Redemption of Tax Credits.

(a) Upon request of a Taxpayer holding a valid Tax Credit Certificate, the Tax Division shall redeem such credit in whole or in part for ninety percent (90%) of the value of the

Tax Credit to the extent of available appropriated funds; provided that the Taxpayer must qualify for a Letter of Good Standing in order to be eligible to redeem any portion of a credit.

(b) A Taxpayer seeking redemption of a Tax Credit Certificate shall file an application on the form prescribed by the Tax Division together with the original Tax Credit Certificate. The Tax Division shall pay the redemption amount within thirty (30) days of submission of a complete application by the Taxpayer to the extent of available appropriated funds. To the extent of any insufficiency of funds, the Tax Division shall either return the original Tax Credit Certificate to the Taxpayer or issue a new Tax Credit Certificate for such partial amounts that are not redeemed by the Tax Division.

(c) An Assignee of the Tax Credit is not entitled to redeem a Tax Credit Certificate.

**Rule 22. Revocation.**

(a) In the event that the attestation by the Applicant's chief executive officer, or equivalent officer, required under these Rules is found to be willfully false, the Corporation shall deny the issuance of or revoke any award of Tax Credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the Applicant and/or the officer may be subject to under applicable law.

(b) The Corporation shall deny the issuance of or revoke any award of Tax Credits if an Applicant or its successor-in-interest is convicted of bribery, fraud, theft, embezzlement, misappropriation, and/or extortion involving the state, any state agency or political subdivision of the state.

(c) Upon breach of an Incentive Agreement, the Corporation may deny the issuance of or revoke the Tax Credit Certificate and any fees paid shall be forfeited.

(d) The Corporation shall notify the Applicant or its successor-in-interest in writing of the revocation of Tax Credits and/or that its right to receive Tax Credits has been terminated.

(e) The Corporation shall notify the Tax Division of any revocation of Tax Credits

(f) If any Tax Credits have been claimed by any taxpayer based upon a Tax Credit Certificate that has been revoked, the Applicant or its successor-in-interest shall pay to the Corporation an amount equal to the Tax Credit claimed. There shall be no adjustment to the Tax Credit claimed by the taxpayer if a taxpayer acquired the Tax Credit Certificate, directly or indirectly, from the Applicant or a Participant in the Applicant in an arms-length transaction, for value, and without notice of violation, fraud or misrepresentation.

(g) The Corporation may provide for additional rights and remedies in any Incentive Agreement, which will be in addition to the rights of revocation and termination provided under this Section.

## Rule 23. Administration and Examination of Records.

The Corporation may examine any books, papers, records or memoranda bearing upon the approval of incentives awarded under the Act, and may require the attendance of any person executing any Application, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine such person under oath respecting any matter which the Corporation deems pertinent or material in determining eligibility for incentives claimed under the Act.

## Rule 24. Inspection Rights.

The Corporation and Tax Division shall have the right at reasonable times to make an inspection and to enter upon any property that is the subject of an Application during the term of an Incentive Agreement to verify compliance with the Act, the Rules, and such other conditions imposed by the Corporation.