

## Food Desert Relief Supermarket Tax Credit Program

### Frequently Asked Questions

Last Revised July 11, 2024

This Food Desert Relief Supermarket Tax Supermarket Tax Credit Program Frequently Asked Questions resource is intended to help anyone interested in the Food Desert Relief Supermarket Tax Credit program to better understand how the program works. This includes, but is not limited to potential applicants, state and local government officials, lenders, community members, community organizations, and other interested members of the public.

The questions and answers included here reflect the major features of the program, as well as questions the Food Desert Relief Supermarket Tax Credit Program staff commonly receive from the public.

The FAQ is an effort to help readers understand key information points from the rules and to help clarify terms in the rules that may be challenging to understand without a background in legislative, administrative, and regulatory language use.

The Food Desert Relief Supermarket Tax Credit program rules are available [here](#).

This FAQ resource will be updated over time as additional questions emerge. Your contributions will help make this resource more useful. Please send any additional questions or comments to Food Desert Relief Supermarket Tax Credit Program staff at [FoodDesertRelief@njeda.com](mailto:FoodDesertRelief@njeda.com).

***Consultation with program staff prior to beginning work on an application is advised.***

#### PROGRAM BASICS

**1. Where in NJ are projects eligible for Food Desert Relief Tax Credit program funding?**

All projects must be within a NJEDA-designated Food Desert Community. The Food Desert Relief Act directed NJEDA to work with the Departments of Community Affairs and Agriculture to develop a methodology to designate up to 50 Food Desert Communities (FDCs) across New Jersey. NJEDA's Board approved the methodology and the 50 designated FDCs in February 2022. There is at least one FDC in each of New Jersey's 21 counties. FDCs were determined at the block-group level, so most are not contiguous with municipal boundaries, and many contain parts of multiple municipalities. There are also several municipalities that contain parts of multiple FDCs. A list of the 50 FDCs can be found [here](#) and an interactive map of the FDCs and their boundaries is available [here](#). More information on the designation methodology can be found [here](#).

**2. How do I know if the project location is within a Food Desert Community?**

First, consult the [Food Desert Communities Map](#). Type in the location's address to determine if it falls within the boundaries of a NJEDA-designated Food Desert Community.

**3. What is the minimum size for a supermarket/grocery store for it to qualify for a Food Desert Relief Supermarket Tax Credit award?**

A supermarket/grocery store project must be at least 16,000 square feet in size to qualify for the Food Desert Relief Supermarket Tax Credit program.

**4. How are the first and second supermarkets defined?**

Tax credits may be awarded to the developer and/or operator of up to two qualifying supermarkets in each designated FDC. The first and second supermarket are defined as the first and second new supermarket or grocery store within each food desert community to be *approved* for tax credits under the program by the Authority. The designation is not based on the timing of construction or opening of a supermarket. A supermarket or grocery store may lose the designation of first or second new supermarket or grocery store if the project does not meet milestones designated by the authority in a timely manner, as determined by the authority.

**5. How is the opening date of the store determined, for the sake of calculating tax credit amounts?**

Under the program rules, a supermarket is considered open for business to the public beginning on the date that the store (a) has received a temporary certificate of occupancy and all certifications from State and local health departments required to operate, (b) has met the requirements of the incentive award, and (c) starts operating on a full-time basis.

**6. Can a store that sells alcoholic beverages qualify for the program?**

The store can sell alcoholic beverages, but the space devoted to such products cannot be included in the calculation to determine the 16,000 sq. ft. minimum size for the purposes of the Food Desert Relief Supermarket Tax Credit program.

**7. What is meant by “operating on a full time basis”?**

Under the program rules, a store is considered to be operating on a full time basis if it is operating at least 60 hours per week every week of the year, absent unavoidable closures or other circumstances approved by the Authority.

**8. How much tax credit support does the Food Desert Relief Supermarket Tax Credit program provide for any given project? (updated 7/11/2024)**

The Food Desert Relief Act allocates \$40 million to the program annually for six years, for a total of \$240 million, less the amount of tax credits that the Authority sells. Within that, the rules do not provide dollar value caps for eligible projects, but do specify various caps based on the project’s need and other factors:

- a) The **Supermarket Financing Gap Tax Credit** for developers is capped at the lower of either 40% of project costs or the project financing gap, for the first new supermarket in an FDC, if the supermarket has a labor harmony agreement or collective bargaining agreement. For the second new supermarket in an FDC, the tax credit is capped at the lower of 20% of project costs or the project financing gap, if the supermarket has a labor harmony agreement or collective bargaining agreement. If the supermarket does not have a labor harmony agreement or collective bargaining agreement, the credits will be capped at 30%, and 15%, respectively.
- b) The **Supermarket Initial Operating Cost Tax Credit** for supermarket operators is capped at the lower of either the initial operating shortfall or 100% of initial operating costs, for the first new supermarket in an FDC. For the second new supermarket in an FDC, the tax credit is capped at the lower of either the initial operating shortfall or 50 percent of initial operating costs.

**9. How much funding does the Food Desert Relief Supermarket Tax Credit program provide overall? (added July 11, 2024)**

The Food Desert Relief Supermarket Tax Credit has an annual award cap of \$40 million. This annual cap applies for six years for a total of \$240 million. Uncommitted credits can be rolled forward to subsequent years.

The Food Desert Relief Act allows NJEDA to sell a portion of the allocated tax credits through a competitive auction process or a publicly advertised solicitation for offers and dedicate the proceeds to provide grants and loans to eligible entities in designated FDCs. Any tax credits sold by NJEDA would reduce the total available for the Food Desert Relief Supermarket Tax Credit Program. In 2023, NJEDA sold \$15 million of the allocated tax credits through the Food Desert Relief Tax Credit Auction. NJEDA may sell additional tax credits in the future as well.

**10. Can a project receive Food Desert Relief Supermarket Tax Credit program tax credits if a project is already under construction?**

For projects seeking only Supermarket Initial Operating Cost Tax Credits, yes. For projects seeking Supermarket Financing Gap Tax Credits, in most cases, no. Supermarket Financing Gap Tax Credit awards are intended to incentivize development of new supermarkets that would not otherwise have been constructed. There are limited circumstances where NJEDA may determine that a project that has halted construction would not be completed without an award, and thus may be eligible for Supermarket Financing Gap Tax Credit program support.

**11. Can fees paid to NJEDA for application to the Food Desert Relief Supermarket Tax Credit program be refunded to the applicant?**

The Food Desert Relief Supermarket Tax Credit program rules clearly state that fees paid to NJEDA are non-refundable, with the exception of the approval fee. While the application fee is non-refundable regardless of whether the application is approved for a Food Desert Relief Supermarket Tax Credit award, the approval fee will be refunded if the tax credit is not approved.

**12. How are tenant/leasehold improvements treated with regard to the Supermarket Food Desert Relief Tax Credit? (added July 11, 2024)**

Tenant/leasehold improvements that the developer pays for are eligible as “Project Costs” for the Financing Gap Tax Credit but may not be counted toward any Operating Cost Tax Credit application by an Operator for a facility that has been awarded a Financing Gap Tax Credit. Costs related to the Financing Gap Tax Credit must be incurred prior to the facility opening to the public.

Tenant/leasehold improvements that the Operator pays for are eligible as “Initial Operating Costs” for the Initial Operating Cost Tax Credit. Costs related to the Initial Operating Cost Tax Credit must be incurred no more than 30 days prior to the facility opening to the public.

**13. What is a certificate of compliance, and when is it issued? (added July 11, 2024)**

A certificate of compliance will be issued by NJEDA annually during the eligibility period (for the Supermarket Initial Operating Costs Tax Credit, this is the first three years that a supermarket is open to the public) verifying that the applicant has complied with all of the program requirements and indicating the amount of tax credit that may be applied against the applicant’s tax liability.

**14. What defines the year for which tax credits will be issued? Is it by fiscal year, calendar year, or from the date of the store opening?**

Tax credits are issued by privilege period (tax year). Please see N.J.A.C. 19:31-28.9(c), (d) and (e):

“The annual reports [...] are due 120 days after the end of the applicant's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. [...] Upon receipt, review, and acceptance of each annual report submitted during the eligibility period, the Authority shall provide to the applicant and the Director of the Division of Taxation in the Department of the Treasury a certificate of compliance indicating the amount of tax credits that the applicant or any co-applicant may apply against the applicant's tax liability. [...] No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period. [...] Upon receipt by the Director of the certificate of compliance, the Director shall allow the applicant or any co-applicant a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and -3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5. An applicant or any co-applicant shall apply the credit awarded against the applicant's liability for the tax period in which the supermarket or grocery store opens for business to the public.”

**15. What is the feasibility study, and who can produce it?**

The feasibility study must be produced by an independent third party, and must demonstrate that:

1. An initial operating shortfall is projected during the eligibility period;
2. The initial operating cost tax credit will be sufficient to fill the initial operating shortfall; and
3. The supermarket or grocery store is projected to operate on a fulltime basis during both the eligibility period and commitment period and will be economically and commercially viable by the last year of the commitment period. (See N.J.A.C. 19:31-28.3 and N.J.A.C. 19:31-28:4.)

**16. What uses of space would and would not be recognized as “occupied by food and related products”?**

Space used for retail, display, storage, and/or preparation of food and related products could qualify. Space used for retail, display, storage, or preparation of other products, such as alcoholic beverages, clothing, personal care items, pharmacy items, etc. would not qualify.

**17. Would a virtual meeting satisfy the requirement for an annual community listening session?**

No. The community listening session must be held in-person or in a hybrid manner, which must include a physical location within the food desert community for community members to participate in the session in person.

**18. Who can I contact to learn more about the Food Desert Relief Supermarket Tax Credit program?**

- a) For the Supermarket Initial Operating Cost Tax Credit:
  - i) Brian Todd, Senior Advisor – Food Desert Relief: [brian.todd@njeda.gov](mailto:brian.todd@njeda.gov)
  - ii) Riley Edwards, Team Lead – Economic Security Projects: [riley.edwards@njeda.gov](mailto:riley.edwards@njeda.gov)
- b) For the Supermarket Financing Gap Tax Credit:

- i) Liza Nolan, Director Real Estate Programs: [liza.nolan@njeda.gov](mailto:liza.nolan@njeda.gov)
- ii) Giancarlo Di Lonardo, Senior Program Officer – Real Estate Programs: [giancarlo.dilonardo@njeda.gov](mailto:giancarlo.dilonardo@njeda.gov)

## **LETTER OF SUPPORT REQUIREMENT**

### **19. What constitutes a “governing body” for the required letter of support?**

Generally, this means a municipal council. However, because there are variations in governance structures within NJ municipalities, EDA uses general language about what is required in terms of a letter of support from a governing body.

### **20. What topics should a governing body letter of support address?**

- a) The aim of the governing body letter of support is to assure NJEDA that any outstanding project issues still requiring local approval following a Food Desert Relief Supermarket Tax Credit award – for example, permits and plan approvals – would not jeopardize project schedule and milestones due to project’s inconsistency with local policy priorities.
- b) Governing body support letters should communicate that the project is consistent with local development goals and that the governing body supports the project and the award of Food Desert Relief Supermarket Tax Credit tax credits requested by the applicant.
- c) Governing body support letters should also acknowledge the Food Desert Relief Supermarket Tax Credit program requirement for projects to open for business to the public within three years of the NJEDA and the applicant executing an incentive award agreement for the Food Desert Relief Supermarket Tax Credit project.
- d) A governing body letter of support does not need to provide a detailed list of approvals still pending after NJEDA award of tax credits. However, such a list would be a welcome element of a governing body support letter if such details are available.

### **21. Is a letter of support from the governing body of the municipality still required if all permits and certificates have already been received by the supermarket?**

Yes, all applications are required to include a letter evidencing support for the project from the governing body of the municipality or municipalities in which the project is located.

## **CONSTRUCTION & PREVAILING WAGE REQUIREMENTS**

### **22. Must prevailing wages be paid during project construction? (added July 11, 2024)**

Yes. In addition, for any project costs incurred prior to application that are otherwise eligible (i.e., demolition, site remediation), an applicant must be able to evidence that prevailing wages were paid for that work in order for it to be included as part of the project costs for purposes of tax credit awards.

### **23. Do prevailing wages have to be paid after a Food Desert Relief Supermarket Tax Credit-funded project is built and opens to the public? (added July 11, 2024)**

If any further construction at the project should be required during the eligibility period or within the two years after the first certificate of compliance is issued, workers engaged in that construction also must be paid prevailing wages, and evidence of that provided to NJEDA.

**24. What requirements apply to contractors doing construction work on a supermarket/grocery store project? (added July 11, 2024)**

Contractors must be registered as with the New Jersey Department of Labor and Workforce Development (DOL) as Public Works Contractors. Registration as a Public Works Contractor requires participation in a registered apprenticeship program for each craft practiced by craftworkers that the contractor directly employs. More about Public Works Registered Contractors can be found [here](#). In addition, contractors must only hire subcontractors that are also Public Works Registered Contractors.

Contractors must agree to pay prevailing wage, which is set by county and by construction trade.

Contractors with 4 or more total employees must abide by affirmative action requirements.

**25. What if prevailing wage rates were not paid for demolition or site remediation work done prior to application for the Supermarket Financing Gap Tax Credit? (added July 11, 2024)**

Demolition and/or site remediation work that has been completed or is still in-progress at the time of application submission where prevailing wages were not paid may not be included as part of the project costs for purposes of a Financing Gap Tax Credit award.

**SUPERMARKET FINANCING GAP TAX CREDIT**

**26. Are fees paid to brokers, leasing agents, etc. an eligible soft cost for the Financing Gap Tax Credit? (added July 11, 2024)**

Yes, broker fees, leasing agent fees, etc. are eligible soft costs.

Per the program rules (N.J.A.C. 19-31-28.2), the definition of "Soft Costs":

"... costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, pre-opening costs, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping costs. The term does not include early lease termination costs, airfare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, commissions and fees to the applicant, project management, or other similar costs."

**27. For projects where site acquisition is part of the development of the Supermarket/Grocery Store, are acquisition costs eligible under the Financing Gap Tax Credit? (added July 11, 2024)**

Acquisition is not an eligible Project Cost under the Financing Gap Tax Credit.

**28. When submitting application information, am I required to present projected returns in a levered or unlevered format?** (added July 11, 2024)

The Authority prefers Applicants to submit projected returns in a levered format. Applicants should clearly label projected returns submitted as part of their application.

**29. My Supermarket/Grocery Store is one component of a larger development. Could my project be eligible for the Financing Gap Tax Credit?** (added July 11, 2024)

Yes. Your application will need to contain financial information relating to both the larger facility/development project and the supermarket/grocery store component (see next question for more detail).

**30. What, if any, additional information do I need to submit if my Supermarket/Grocery Store is part of a larger facility/development?** (added July 11, 2024)

Applicants whose Supermarket/Grocery Store is part of a larger facility/development must provide documentation (equity, debt, grants/subsidies/tax credits, etc.) for the larger facility/development.

The Applicant must also submit a Sources & Uses budget and a pro forma for the larger facility including operating assumptions and return analysis indicating whether the returns are levered or unlevered.

**SUPERMARKET INITIAL OPERATING COST TAX CREDIT**

**31. What costs are considered initial operating costs?** (added July 11, 2024)

Under the program rules, initial operating costs are defined as expenditures by the applicant for the operation of a first or second new supermarket or grocery store within the first three years after the opening of the supermarket or grocery store for business to the public, but within a standard range based upon industry standards, as determined by the Authority. Initial operating costs shall not include inventory, incentive consultant fees, or Authority fees. Initial operating costs may include expenditures for the operation of a first or second new supermarket or grocery store incurred within one month prior to the opening of the supermarket or grocery store for business to the public. Initial operating costs may additionally include expenditures by an affiliate of the applicant for costs incurred at the site of the project.

**32. For the initial operating credit, when and for how long is the supermarket required to adhere to affirmative action and prevailing wage requirements?** (added July 11, 2024)

Please see N.J.A.C. 19:31-28.13:

“(b) For an initial operating cost tax credit, the Authority’s affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and the prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to the project, including, but not limited to, construction contracts for work performed after the application is approved and construction contracts for work performed after the date of the application if included in the initial operating shortfall.

(c) The Authority's affirmative action and prevailing wage requirements shall continue to apply to the project for two years after the first certificate of compliance is issued."

**33. The percentage of net operating profit given in the program information slides is 3%. Has this amount been set, or is this figure an example? Will this amount vary by FDC?**

The 3% figure is used in the slides as an illustrative example. The reasonable and appropriate net operating profit will be established by NJEDA at either a statewide or FDC level, depending on availability of data. Staff is still evaluating what a reasonable net operating profit may be and intends to present a recommendation to the NJEDA Board at a later date, at which point more information will be shared on the NJEDA website.