

**§6852. Procedures for application; certificate of approval**

**1. Application.** A qualified applicant may apply to the commissioner for a certificate of approval. Applicants shall submit to the commissioner information demonstrating that the applicant is a qualified applicant. A certified applicant may hold only one certificate at any time. [PL 1997, c. 449, §1 (NEW).]

**2. Determination by commissioner.** The commissioner, within 30 days of receipt of the application, shall review the information contained in the application and issue a written determination as to whether the applicant is a qualified applicant. If the commissioner determines that the applicant is a qualified applicant, the commissioner shall issue a certificate of approval to the qualified applicant at the time of the determination. If the commissioner determines that the applicant is not a qualified applicant, the commissioner shall issue a denial of the application at the time of the determination. [PL 1997, c. 449, §1 (NEW).]

**3. Memorandum of agreement.** Upon issuance of a certificate of approval to a qualified applicant, the commissioner shall enter into an agreement on behalf of the State with the qualified applicant. That agreement must provide that the State shall allow the credit provided for in this chapter as it is in effect on the date the certificate of approval issues for as long as the applicant qualifies for the credit provided for in this chapter on the date the certificate issues. [PL 1997, c. 449, §1 (NEW).]

**4. Transfer of certificate.** If a certified applicant proposes to transfer, including, without limitation, transfer by operation of law, all or substantially all of the shipbuilding facility in which a qualified investment was made to another person, or a person proposes to acquire 50% or more of the voting stock of the certified applicant, application may be made to the commissioner to approve transfer of the certificate to that person in connection with the transfer of the stock or facility. The commissioner shall grant the transfer of the certificate only if one of the following conditions is satisfied.

A. The transferee of the shipbuilding facility or of the certified applicant's stock is a member of the certified applicant's affiliated group as defined in section 5102, subsection 1-B at the time of the transfer. [PL 1997, c. 449, §1 (NEW).]

B. The transferee of the shipbuilding facility or of the certified applicant's stock is not a member of the certified applicant's affiliated group as defined in section 5102, subsection 1-B at the time of the transfer and the commissioner finds that the transferee intends to continue the operations of the shipbuilding facility in substantially the same manner as prior to the transfer and has the financial capability to do so. In addition, prior to approval of any transfer, the commissioner may request and be provided with the report and audit of the transferor pursuant to section 6854. The commissioner may condition the approval of the transfer based upon the findings of the report and audit. [PL 1997, c. 449, §1 (NEW).]

If the commissioner grants a transfer of the certificate, the transferee must be treated as the certified applicant for all purposes of this chapter. For purposes of calculation of employment, withholding taxes, qualified investment expenditures and the number of qualified ships of the certified applicant, the qualified employees of the transferor prior to transfer, the state income taxes deducted and withheld by the transferor from the wages of those qualified employees pursuant to chapter 827 prior to transfer, the qualified investment expenditures of the transferor prior to transfer and the qualified ships of the transferor prior to transfer must be considered the qualified employees, withholding taxes, qualified investment expenditures and qualified ships of the transferee, respectively. [PL 1997, c. 449, §1 (NEW).]

**5. Revocation of certificate.** A certificate of approval must be revoked by the commissioner if the certified applicant has not made qualified investment expenditures of at least \$150,000,000 within 5 years and \$200,000,000 within 10 years after issuance of the certificate of approval or if the

shipbuilding facility is closed or transferred in an unapproved transfer within 5 years after issuance of the certificate of approval. A certified applicant whose certificate of approval is revoked within 5 years after issuance of the certificate of approval shall pay to the State the amount of any credits claimed by the certified applicant under this chapter prior to revocation of the certificate. A certified applicant whose certificate of approval is revoked between 6 and 10 years after issuance of the certificate of approval shall pay to the State the amount of any credit claimed by the certified applicant under this chapter between the 6th year and the year in which the certificate is revoked.

[PL 1997, c. 449, §1 (NEW).]

**6. Appeal.** The applicant or certified applicant may appeal in accordance with Title 5, chapter 375, subchapter VII any determination, action or failure to act by the commissioner or the State Tax Assessor.

[PL 1997, c. 449, §1 (NEW).]

#### SECTION HISTORY

PL 1997, c. 449, §1 (NEW).

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