September 18, 2013

Tax Incentives Overhaul Legislation: New Jersey Economic Opportunity Act of 2013

Quick Summary. On September 18th, Governor Christie signed the Economic Opportunity Act of 2013 which will become effective immediately. Earlier in the month, the Governor issued a conditional veto of the legislation which the Assembly and Senate quickly voted to approve and send back to the Governor for his signature. The legislation overhauls EDA's tax incentives programs to encourage job growth and substantial capital investment in priority areas across the State. The conditional veto deleted an expansion of prevailing wage to post-construction maintenance workers, and also eliminated the hospital re-purposing tax credit provisions. There is broad recognition within the development community and in the Legislature that some of the language in the legislation is flawed and a clean-up bill will be introduced.

A CLOSER LOOK

There are **four main components** of the Economic Opportunity Act: (1) **Phase-out of** three existing programs (**BRRAG, BEIP, UTHTC**) with funding to complete several pending UTHTC "pipeline" projects, (2) Substantial **expansion of the Grow NJ tax credit program** with the highest level of bonus credits for Mega Projects and projects located in Urban Transit Hubs[1] and the Garden State Growth Zone[2] ("Growth Zone'), and lower minimum capital investments and job creation requirements for 8 South Jersey counties including Atlantic and Camden,[3] (3) Allocation of **$600 million in tax credits to the ERG program for qualified residential projects** with the bulk of the credits for targeted areas including Urban Transit Hubs and the 8 South Jersey counties, and (4) Authorization to create **Garden State Growth Zone Development Entities**, discussed below.

1. Phase-out of existing EDA incentives programs:

a. Business Retention and Relocation Assistance Grant (BRRAG) and Business Employment Incentive Program (BEIP)

No applications will be accepted after Effective Date of legislation and EDA must take final action on pending applications prior to December 31, 2013.

b. Urban Transit Hub Tax Credits (Hub)

i. **Qualified Business Facility**

[1] The Urban Transit Hub cities are Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson, and Trenton.
[2] Garden State Growth Zone includes Camden, Passaic, Paterson and Trenton.
[3] The 8 South Jersey counties are Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem.

1. Hub Applications for business projects must be submitted prior to Effective Date and EDA can award tax credits to the extent there remains sufficient financial authorization and must take action by December 31, 2013.
2. An application that was denied may apply under expanded new programs.

ii. Protection of Hub <u>Residential</u> Pipeline Projects

1. EDA is authorized to approve and allocate credits for all applications submitted from 10/24/12 to 12/21/12.
2. EDA must act on the Residential Pipeline Projects within 120 days after Effective Date.

2. <u>Expansion of Grow NJ</u>

Grow NJ offers a business owner/tenant of a qualified business facility that satisfies certain minimum capital investments and creates/retains a minimum number of full time jobs, **<u>a per employee tax credit that can be applied toward the employer's Corporate Business Tax obligation annually for up to ten years</u>**. The applicant for the tax credits is the business owner/tenant as the purpose of the program is to attract new businesses to the State. In order to do this, the legislation lowers the amount of previously-required capital investment and new or retained employee thresholds based upon the type of premises, type of industry and location of the project. The applicant must commit to stay at the business facility and maintain employment levels for 1.5 times the length of the tax credit term (*i.e.* 10 years x 1.5 = 15 years). Determining whether a business is eligible for tax credits and how much is a complex analysis. **<u>Below is a short-hand primer</u>** on this process; we are available to provide further guidance.

<u>Part I -- Determining Eligibility for Grow NJ Tax Credits</u>

A. Minimum Capital Requirements. To be eligible for tax credits, the premises which the business occupies must meet the following per square foot of gross leasable space capital investment requirement:

i. $120 for new office construction,
ii. $60 for new industrial construction,
iii. $40 for rehabilitation of office space, and
iv. $20 for rehabilitation of industrial premises.

The square footage requirements for projects located in a Growth Zone or 8 southern counties would be reduced by 1/3.

B. Minimum Job Requirements. The business must also meet minimum job creation or job retention requirements based upon the type of business that will occupy the premises:

i. Tech Start-up or Manufacturing: 10 new or 25 retained jobs
ii. Targeted Industry: 25 new or 35 retained jobs
(Includes transportation, defense, energy, logistics, life sciences, technology, health, and finance. Manufacturing is also a targeted industry but has a lower minimum jobs requirement)
iii. All other businesses: 35 new or 50 retained jobs

The minimum job requirements for projects located in a Growth Zone or 8 southern counties would be reduced by 1/4.

<u>Part II -- Determining the Amount of Tax Credits for Eligible Projects</u>

If the business meets the above eligibility requirements, EDA will determine the Base and Bonus credits available. Based upon the base plus bonus credits, it is possible for a business to obtain tax credits greater than the total capital investment.

A. Base Amount of Per-Employee Annual Tax Credit

i. Mega Project, Urban Transit Hub or Growth Zone project: $5,000
ii. Distressed Municipality: $4,000
iii. Priority areas[4]: $3,000
iv. All others: $500

<u>Definition of "Mega Projects</u>":

i. Business located in a port district and engaged in logistics, manufacturing, energy, defense, or maritime industries with either (1) a capital investment of $20MM or more with 250 new or retained employees or (2) creating/retaining 1,000 FTEs **<u>or</u>**
ii. Business in an aviation district, Garden State Growth Zone, or priority area housing the US headquarters of an auto manufacturer with either (1) a capital investment of $20MM or more with at least 250 new or retained employees or (2) creating/retaining 1,000 FTEs **<u>or</u>**
iii. Business located in an Urban Transit Hub having a business of any kind, with a capital investment of $50 million with 250 full-time employees.

B. Bonus Tax Credits for Meeting Priority Criteria

[4] Priority areas include, but are not limited to, areas that are designated as State Planning Areas 1 or 2, the site of a disaster recovery project, or the site of a commercial building with over 400,000 square feet of office, lab or industrial space vacant for a year, or a site negatively impacted by the issuance of UTHTC credits for a qualified business facility.

The Act offers bonus credits based upon 16 different criteria depending upon location of the project, type of business, amount of jobs over the minimum thresholds, creation of moderate income housing for employees, sustainability, etc. The amount of per-employee bonus credits range from $200 to $5,000 annually. Contact us for more information about whether your project would be eligible for bonus credits.

C. Limitations on Tax Credits

Grow NJ does not have an overall program cap on the total number of tax credits that can be issued for all projects combined. However, the Act imposes limits and caps on the amount of credits available for individual projects. Additionally, the business must establish that there will be a net positive benefit to the State and that the tax credits are a material factor in creating or retaining the jobs.

<u>50% Rule for Retained Jobs:</u>

EDA will determine the gross amount of base and bonus credits available for a qualifying project. The business will be entitled to 100% of the credits for each <u>new</u> job created, but only 50% of the credits for each <u>retained</u> job.[5]

<u>Per Employee Annual Caps</u>:

i. Mega Projects $15,000 (annual aggregate for all employees is $30MM)
ii. Growth Zone: $15,000 (annual aggregate for all employees is $30MM)[6]
iii. Hub projects: $12,000 (annual aggregate for all employees is $10MM)
iv. Distressed Municipality: $11,000 (annual aggregate for all employees is $8MM)
v. Other Priority Areas: $10,500 (annual aggregate for all employees is $4MM, but cannot be more than 90% of the employer withholding taxes of the business)
vi. Other eligible areas: $6,000 (annual aggregate for all employees is $2.5MM, but cannot be more than 90% of the employer withholding taxes of the business)
vii. Disaster recovery areas: $2,000

For awards above $4 million annually, EDA will award the lesser of the “base plus bonus” amount or the amount it determines is needed to complete the project.

D. Alternative Methodology for Camden

A special provision for Camden provides an alternative method which determines the per employee tax credit award by dividing the total capital investment by the total number of

[5] There are exceptions which permit 100% credit for retained jobs.

[6] For Camden, there is a $35 million annual cap.

FTEs.[7] There is a maximum grant amount depending upon the amount of capital investment and number of jobs created. The applicant can select whichever method achieves the highest level of tax credits.

Alternative Camden Methodology Chart		
FTEs	**Minimum Capital Inv.**	**Maximum Award**
35 or more	$5M	$20M
70 of more	$10M	$30M
100 or more	$15M	$40M
150 or more	$20M	$50M
250 or more	$30M	No maximum

Application Deadline. Tax credits must be applied for by July 1, 2019, except that a Mega Project application must be submitted within 4 years of the Effective Date of the legislation (September 2017). A business will have 3 years from the date of approval to submit evidence that it has met the capital and FTE requirements, with 2 six-month extensions at the discretion of EDA.

3. Expansion of Economic Redevelopment and Growth Grant (ERG)

Under the ERG program, a developer that can demonstrate that its redevelopment project requires a **subsidy in order to close a project financing gap** may apply for an incentive grant in an amount **up to 75% of the annual incremental tax revenues generated by the project over a 20 year period**. Because an ERG grant is based upon tax revenues, retail projects benefit the most from the program (with the exception of the new residential ERG program which will be discussed below). If the redevelopment project is within the Garden State Growth Zone, 85% of the projected annual incremental revenues may be pledged toward the award. Under the program, **the grant cannot exceed 20% of the total cost of the project and a developer must make a 20% equity investment**. Project costs include costs incurred by the developer, until issuance of a permanent certificate of occupancy, relating to lands, buildings, improvements, personal property, construction and environmental remediation, but excluding costs that have received federal, State or local funding.

[7] In a Garden State Growth Zone such as Camden, the following qualify as a capital investment: any and all redevelopment and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the EDA, engineering, legal, accounting, and other professional services required; and environmental remediation, and infrastructure improvements for the project area.

There are other eligibility criteria including: (a) the project must be located in a qualifying area and be a redevelopment project, (b) the project must satisfy minimum project costs, [8] (c) construction has not started, and (d) the ERG would result in net benefits to the municipality and/or State.

The legislation authorizes EDA to grant a **bonus incentive of up to 10% of project costs**, i.e. permitting a maximum award of 30% of project costs, if the developer can meet any one of several criteria. Projects in a Garden State Growth Zone may receive up to 40% of project costs. A project meeting one of the following criteria is eligible for a 10% bonus: (a) supermarket in distressed municipality without adequate access to fresh foods, (b) a health care facility in a distressed municipality without adequate access to such services, (c) project in a distressed municipality pursuant to a federal contract, (d) a transit project, (e) a residential project with a 10% set aside for moderate income housing, (f) located in a highland development area, (g) located in a Growth Zone, (h) a disaster recovery project, (i) an aviation project, (j) a tourism destination project, or (k) substantial rehabilitation of an existing structure.

The new Act does not change the existing requirement that any residential project receiving an ERG grant must have a 20% set aside for low and moderate income housing.

The legislation authorizes EDA to award up to **$600 million in new tax credits to developers for qualified residential projects**[9] under the restructured ERG program. For a residential project receiving an ERG, if the estimated amount of incremental revenues pledged toward the incentive grant is inadequate to fully fund the amount of the incentive grant, then EDA will award the developer tax credits equal to the full amount of the incentive grant. Tax credits awarded for a qualified residential project will undergo the same financial analysis as EDA uses in the Urban Transit Hub Tax Credit (UTHTC) program.

Tax Credit Transfer Certificate

Similar to the procedure under the Urban Transit Hub statute, a new section has been added to permit a developer to transfer the tax credits awarded under the new residential ERG program.

[8] Qualifying areas include, but are not limited to, Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), designated Centers under the State Redevelopment Plan, an area zoned for redevelopment by the NJ Meadowlands Commission, and areas owned by the NJ Sports and Exposition Authority within the Hackensack Meadowlands District.

[9] Qualified residential projects require a minimum of $17.5 million in total project costs if the project is located in a municipality of more than 200,000 residents. For municipalities with less population or for disaster recovery projects the minimum costs must be at least $10 million. For projects in a Garden State Growth Zone municipality, the total project costs must be at least $5 million.

Categories for Residential Tax Credits

$600 million in new tax credits for qualified residential projects is allocated as follows:	
a.	$250 million is restricted to projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem counties of which $175 million shall be for Garden State Growth Zone projects (i.e. in Camden) and $75 million for projects in municipalities with a Municipal Revitalization Index of 400 or more.[10]
b.	$250 million is restricted to projects that do not qualify under (a) and are located in urban transit hubs that are commuter rail in nature or in a Growth Zone municipality, disaster recovery projects or, in its own category, projects located in Harrison (Hudson County).
c.	$75 million is limited to projects in distressed municipalities, deep poverty pockets or a highlands redevelopment that does not qualify under (a) or (b).
d.	$25 million is limited to projects in qualifying redevelopment and growth areas not covered under (a), (b) or (c).
e.	Not more than $40 million of credits can be awarded to any project in a deep poverty pocket or distressed municipality.
f.	Not more than $20 million awarded to any other project.

Deadlines for ERG Program Applications

An application for tax credits for a **qualified residential project** under the restructured ERG program must be filed by **July 1, 2015**. If the application is granted, the developer must submit a temporary certificate of occupancy for the project no later than July 28, 2015. We believe the deadline for obtaining a certificate of occupancy may be an error since it is only 27 days after the ERG grant approval. We have raised the issue with EDA and legislative staff and there is a coalition of stakeholders attempting to obtain a legislative fix; notwithstanding, the current deadline in the legislation for submission of a temporary certificate of occupancy is July 28, 2015.

Under the legislation, a developer seeking an incentive grant for a **business facility** would have until **July 1, 2019** to submit an application.

Businesses May Amend Prior Application for Tax Incentives

A business that applied for tax credit incentives prior to the Effective Date of the legislation but which application has not yet been approved or executed an agreement with EDA, may amend the application or reapply for the same project to obtain additional incentives under the legislation.

[10] The Index compares the need for revitalization in Urban Coordinating Council (UCC) municipalities with non-UCC municipalities. The higher the Index number, the greater the disparity.

4. Creation of a Garden State Growth Zone Development Entity

The Act authorizes the creation of private limited-profits development entities to encourage redevelopment in Garden State Growth Zone municipalities: Camden, Passaic, Paterson and Trenton. The entities would be formed as corporate entities under State law. The allowable net profits of such an entity shall be determined by applying an allowable net profits formula contained in the legislation. Such an entity will be eligible for a **property tax exemption** on improvements for a **20-year period** after issuance of a certificate of occupancy for the redevelopment project. For the initial 10 years, the **exemption shall be equal to 100% of the property tax**; for years 11 through 20, there is a sliding scale. Moreover, the owner of property in a Growth Zone municipality that does not qualify as a Garden State Growth Zone Development Entity but that performs any new construction, improvements or substantial rehabilitation shall be entitled to a property tax exemption. In such a case, the municipality would consider the assessor's full and true value of the improvements as not increasing the value of the property for a period of five years.

CONTACTS

For more information about whether your project will qualify for incentives under the New Jersey Economic Opportunity Act of 2013, please contact us.

- **Anthony R. Coscia -** 732-846-2120, acoscia@windelsmarx.com
- **Charles B. Liebling -** 732-448-2526, cliebling@windelsmarx.com
- **Julie R. Tattoni -** 732-448-2559, jtattoni@windelsmarx.com