

WINDELS
MARX

TRADITION. INNOVATION. DISTINCTION.



The Innovation Evergreen Program

Economic Recovery Act of 2020 (“ERA”)
P.L. 2020, Chapter 156, as amended by P.L. 2023, Chapter 118
New Tax Incentive Programs

October 2023

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Tradition.

Windels Marx and its predecessor firms began practicing law in the 1830s. A tradition of leadership is evident throughout our history, including founding members and officers of the preeminent New York State Bar Association and the Association of the Bar of the City of New York.

Innovation.

We are a midsize firm that has great pride in our ability to offer sophisticated legal services on a par with larger law firms, while also providing the focused attention often associated with boutique firms.

Distinction.

Our tireless work on behalf of clients has been recognized among numerous industry and legal benchmarking surveys.



Windels Marx is a full service, midsize law firm based in New York, NY, with offices in New Brunswick and Madison, NJ, and Stamford, CT. We have nearly 150 lawyers across more than 20 practice groups, the largest of which by volume of business are financial transactions, real estate, litigation and bankruptcy.

Practices

Banking

Bankruptcy & Creditors' Rights

- Representation of Trustees
- Representation of Debtors
- Representation of Secured & Unsecured Creditors
- Bankruptcy-Related Litigation & Transactions

Corporate & Securities

- Mergers & Acquisitions
- Corporate Formation & Finance
- Securities
- Corporate Governance
- General Corporate Matters

Employment & Employee Benefits

- Employment Litigation
- Environmental Law
- Environmental & Toxic Tort
- Financial Transactions
- Asset-Based Lending
- Corporate Finance & Syndicated Lending
- Cross-Border Transactions
- Middle-Market Lending
- Trade Finance

Governmental Relations

Health Law

Hospitality

Infrastructure Development & Finance

Insurance

- Insurance Litigation
- IP, Technology & e-Commerce
- Data Privacy & Security
- IP-Hatch-Waxman Act
- IP Licensing Litigation
- Litigation & Alternative

Dispute Resolution

- Appellate Litigation
- Class Action Defense
- Commercial Litigation
- Tobacco Litigation
- White Collar Defense & Corporate Investigations

Private Client Services, Estates & Trusts

- Probate Litigation

Public Finance & Not-for-Profit

Real Estate

- — Acquisitions & Sales
- Construction
- Development & Land Use
- Finance
- Joint Venture/Equity Investments
- Leasing
- Redevelopment
- Real Estate Litigation

Renewable Energy & Sustainability

Tax

Tax Lien & Mortgage

Foreclosure

Transportation

Workouts & Restructurings



American inventor Thomas Edison once said, "Genius is one percent inspiration and ninety-nine percent perspiration." When that genius was tested, Windels Marx represented Edison in litigation that confirmed his claim to be the inventor of the incandescent electric light.

The Innovation Evergreen Program

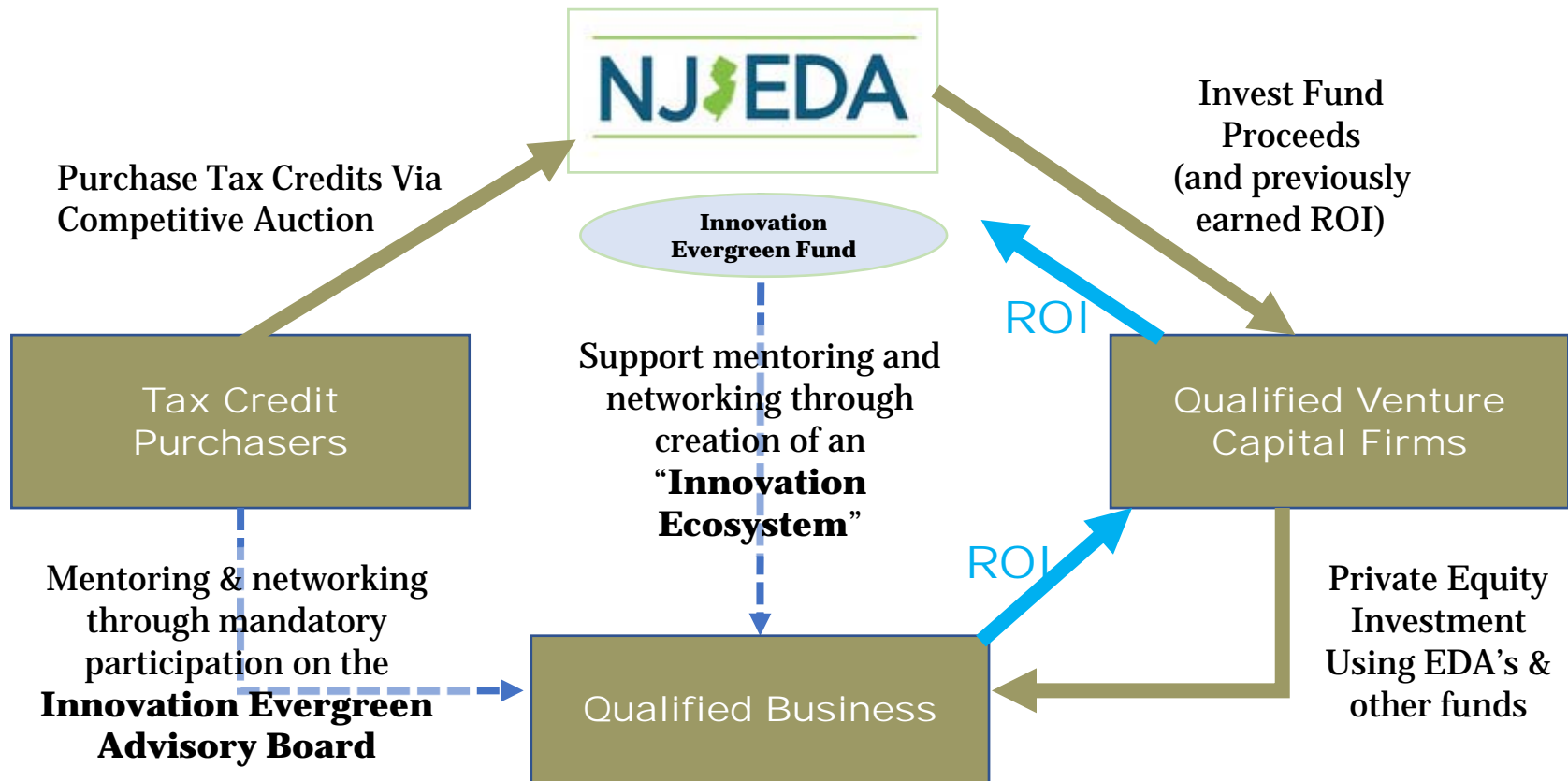
Sections 19-34 of ERA

Innovation Evergreen Program is the State's attempt to attract and benefit from innovative high-growth companies of the future **as a venture capital equity investor**.

Under the program, EDA (1) raises funds by auctioning off State tax credits, (2) identifies qualified venture capital firms, and uses the expertise of these firms to (3) co-invest in promising high-growth companies in New Jersey within targeted industries.

EDA currently has ~**\$46 million in unallocated capital** available, and announced its first \$500,000 investment through the Fund in October 2023.

The Innovation Evergreen Program 3 Constituencies



The Innovation Evergreen Program Qualified Venture Firms

EDA has created a process for firms to apply to become QVFs under the program (10 approved so far).

- Must consider the usual—management structure, fee structure, quality of the leadership, investment experience, prior financial performance, connections to New Jersey, DEI.

QVFs must have not less than \$10mm of equity capitalization, net assets, or written commitments.

QVFs must have at least two principals with 5 years of money management experience each in venture capital or private equity.

EDA's investments through QVFs can generally be no more than \$5mn per investment per year (max of two *initial* investments per QVF per year).

- (or \$6.25mm for Minority or Women Owned businesses, businesses that use a core technology that was developed at a NJ college or university, or businesses considered a university spin-off)
- QVFs must at least match the EDA's investment in a business.

The Innovation Evergreen Program Qualified Businesses

"Qualified business" means a **high-growth** business that ... has its principal business operations **located in the State** and intends to maintain its principal business operations in the State after receiving a qualified investment under the program; is **engaged in a targeted industry**; and **employs fewer than 250 persons** at the time of the qualified investment.

Any one of the following qualify a business as “located in the State”:

1. At least 50% of non-retail employees reside in the State or fill a position in the State.
2. At least 50% of non-retail payroll is paid to individuals who reside in the State or are full-time employees in the State.

Qualified investments must be either in a Planning Area 1 (Metropolitan) or an Opportunity Zone.

- Statutory goal of having 25% of the investments from the Fund go to Opportunity Zones.

The Innovation Evergreen Program Qualified Businesses (continued)

"Targeted industry" means any industry identified from time to time by EDA which shall initially include:

- advanced transportation and logistics,
- advanced manufacturing,
- aviation,
- autonomous vehicle and zero-emission vehicle research or development,
- clean energy,
- life sciences,
- hemp processing,
- information and high technology,
- finance and insurance,
- professional services,
- film and digital media,
- non-retail food and beverage businesses including food innovation,

... and other innovative industries that disrupt current technologies or business models.

The Innovation Evergreen Program Tax Credit Purchasers

Tax credits are auctioned off by EDA through *a competitive bidding process*.

- Authorized for up to \$300mn in tax credits across up to 5 separate auctions.
- First auction conducted in 2022 (8 purchasers selected), yielding \$46mn in unallocated capital.
- Next auction is **expected in 2024**.

Credits can be applied to N.J. Corporation Business Tax, or to N.J. Insurance Premium Tax.

Bidding minimum requirements:

- Bids must be for at least \$500,000 in tax credits.
- Bids must offer at least 75¢ per dollar of tax credits (EDA may increase this threshold).
- Bidders must commit to serve on the **New Jersey Innovation Evergreen Advisory Board**.
 - ✓ Board to provide mentoring and networking opportunities for qualified businesses.

Tax credits transferable only once

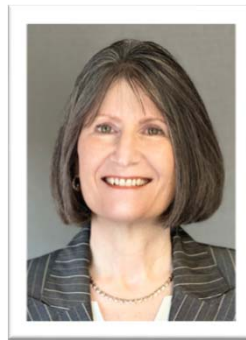
- 10% of consideration received must be paid as a fee to EDA.
- 85¢-per-dollar minimum price also applicable to transfer
- All details (seller, buyer, purchase price, etc.) must be made public on EDA's website.

Questions, Comments?



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To learn more about any of the programs under the New Jersey Economic Recovery Act of 2020, please contact Chuck, Julie, Jeet, Keshav or your relationship lawyer.