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## New Jersey “Emerge” Job Creation Tax Credit Program

**Economic Recovery Act of 2020 (“ERA”)**  
P.L. 2020, Chapter 156, as amended by P.L. 2021, Chapter 160 (“Amendment”)  
**New Tax Incentive Programs**

September 2021

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# Eligibility Summary

Sections 68-81 ERA and Sections 30-38 Amendment

- **Emerge is the revamped Grow NJ Program** for job creation/retention and new capital investment.
- **Eligibility for a tax credit award will depend on:**
  - ✓ Location of the project
  - ✓ Amount of capital investment
  - ✓ Level of job creation
  - ✓ **Material Factor Test:** Whether the tax credits are a material factor in the decision to locate in NJ and an analysis of competitive out-of-state alternative location(s).
  - ✓ Net positive benefit to the State

# Eligibility: Location & Capital Investment

## **Location:**

- Government Restricted Municipality (GRM): Atlantic City, Trenton, Paterson
- Distressed municipalities and Enhanced Areas (urban transit hubs)
- State Planning Areas 1 and 2
- Other areas identified via the NJEDA mapping tool on the Emerge webpage.

## **Capital Investment Minimum:**

- \$20 per SF for rehab of industrial space
- \$60 per SF for new construction of industrial space
- \$40 per SF for rehab of all other space
- \$120 per SF for new construction of all other space

## Eligibility: Creation of New Jobs

Program primarily incentivizes the creation of new jobs.

- If Targeted Industry, minimum of 25 new employees
- If not a Targeted Industry, minimum 35 employees
- For a small business, 25% growth of its workforce with new jobs within eligibility period. Small business is a company in a targeted industry with fewer than 100 employees.

**Targeted Industry:** Any industry identified from time to time by NJEDA 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.

## Eligibility: Retained Jobs

Retained jobs – those that already exist in NJ – can be incentivized only if there are a significant number of employees.

### **If combined with new jobs, retention of:**

- 150 existing jobs located in a GRM
- 250 in a Qualified Incentive Tract or Enhanced Area municipality
- 500 anywhere else in the State

### **Without new jobs, a minimum of:**

- 500 retained jobs in a Qualified Incentive Tract, Enhanced Area or GRM or
- 1000 retained jobs located any place else in the state

# Eligibility: Material Factor Test

What is the Material Factor Test? A company will need to establish through documentation (CEO Certification and other corroborating documents/information) that NJ is in competition with another state for location of the business.

## **Two-part test:**

- Cost Comparison between NJ and another state.
- Non-Cost Comparison factors to determine whether the other state is really “in play.”
- Incentive offer from another state.
- If you are a life science company, is the business seeking to locate near other life science companies and ancillary businesses?
- If the business has an existing location in NJ, is there a synergy that you aren't likely to leave the state?

# Eligibility: Net Positive Benefit Test

Net Positive Benefit to the State: The business must demonstrate that the capital investment and jobs will yield a net positive benefit to the State over the length of the Commitment Period.

- At least **200%** for Government Restricted Municipality or Mega Project
  - ❖ **Mega Project** is defined as a project of special economic importance as determined pursuant to regulations and as measured by the level of new jobs, new capital investment, and opportunities to leverage leadership in high priority targeted industries.
- At least **300%** in a Distressed Municipality or an Enhanced Area (included urban transit hubs and high poverty municipalities)
- At least **400%** for all other locations in the state

# Eligibility & Commitment Period

**Eligibility Period is the time period during which a business can claim, sell or use a tax credit.**

- Begins in the year that NJEDA accepts the completion certification.
- Extends for a period of 7 full years (may be extended for a pro-rated year).
- May be non-consecutive years.

## **Commitment Period**

- The period of time that the business must maintain the project at a location in NJ with the minimum number of jobs for eligibility.
- 1.5 times the length of the Eligibility Period.
- The business may elect to extend the Commitment Period in order to meet the minimum Net Positive Benefit Test.
- If the business does not fulfill the Commitment Period, NJEDA could seek to recapture the value of the credits from the business.

## QBF & Withholdings Minimums

Emerge Program awards Tax Credits for each new full-time employee working at the Qualified Business Facility ("QBF").

**Minimum Square Feet of QBF:** QBF must be able to accommodate at least 51% of the business' new and retained employees.

**Minimum NJ Withholdings:** Business must certify that not less than 80% of withholdings for new and retained employees are subject to NJ gross income tax.

## Tax Credit Calculation: Base Credit

NJEDA will award a Base Tax Credit for each new or retained full-time employee based on the project location.

- **\$4,000 per employee** for projects located in a Government Restricted Municipality or a Mega Project.
- **\$3,500 per employee** for projects located in an Enhanced Area.
- **\$3,000 per employee** for projects located in a distressed municipality.
- **\$2,500 per employee** for projects located in a Qualified Opportunity Zone or Employment and Investment Corridor.
- **\$500 per employee** for projects in other Eligible Areas.

# Tax Credit Calculation: Bonus Credits

NJEDA will award Bonus Tax Credits for each new or retained full-time employee each year based on the project characteristics.

## **Partial listing of Bonus categories:**

- ✓ MRI Distress Score over 50 - \$1,000
- ✓ Extra CapX for industrial or R&D projects - \$500 to \$1,500
- ✓ Extra Large # of New Jobs - \$500 to \$1,500
- ✓ Small Business - \$500
- ✓ High Median Salary - \$200 to \$1,000
- ✓ Targeted Industry - \$500/ With a Relationship with High Ed - \$1,000
- ✓ Free On-site Child Care - \$1,000
- ✓ Prison Re-entry Employment Program - \$500
- ✓ Exceeds Silver/Gold LEED - \$250/\$500
- ✓ Located in Opportunity Zone - \$1,000
- ✓ Board of Director Diversity - \$2,000

# Tax Credit Calculation

A Business will be eligible to obtain an annual tax credit equal to the Base + Bonus Tax Credit for each full-time employee working at the QBF.

- New full-time employees entitle the business to **100%** of the Base + Bonus
- Retained full-time employees entitle the business to **50%** of the Base + Bonus
- Annual Tax Credit **caps** per employee:
  - ✓ \$8,000 GRM/Mega Project
  - ✓ \$6,000 Enhanced Area
  - ✓ \$5,000 Distressed Municipality
  - ✓ \$4,000 Opportunity Zone or Investment Corridor
  - ✓ \$3,000 Other Areas

## Other Limitations & Requirements

- ✓ Construction workers and building maintenance workers must be paid **Prevailing Wage** during the construction of the project and during the Eligibility Period.
- ✓ **Affirmative Action** for construction of project.
- ✓ If the number of full-time **positions drops by more than 20%** at the QBF or State-wide, the tax credits for that year will be forfeited.
- ✓ If the **salaries** of the full-time jobs are **reduced by more than 20%**, the tax credits for that year will be forfeited.
- ✓ The **QBF location** may be moved subject to approval of NJEDA and subject to potential reduction of tax credits based on new location.
- ✓ NJEDA can seek to recapture of the value of the tax credits, or pro rata portion, if the business **does not fulfill the Commitment Period** or has made a material misrepresentation. Recapture not against Buyer of Tax Credits.
- ✓ **Project Phasing** will be permitted.

## Sales of Emerge Tax Credits

- **Tax Credits can be sold.** The sale price must be at least 85% of the face value of the tax credits (before discounting to present value).
- **Tax Credits can be resold** after an initial transfer.
- **The State has the option to purchase** the tax credits at **90% of face value** if they have not been used or sold after 2 years.
- **Tax Credits may be used against** a Corporate Business Tax (CBT) or Insurance Premium Tax (IPT) liability.
- Business can carry **unused tax credits** forward for 7 successive years.

*Annual reporting requirement by business to remain in compliance.*

# Status of Program Implementation

NJEDA has informative webpage on the Emerge Program.

- **Interactive Locator Mapping Tool** will identify eligible locations.
- **Two step application process:**
  - (1) Submit an inquiry which will be reviewed by NJEDA staff for basic eligibility,
  - (2) for projects that meet the basic requirements, submit a formal application and fee online.
- NJEDA has issued **program regulations** available on the website.
- First Emerge application was **approved** at the September NJEDA Board meeting.

# 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 or your relationship lawyer.

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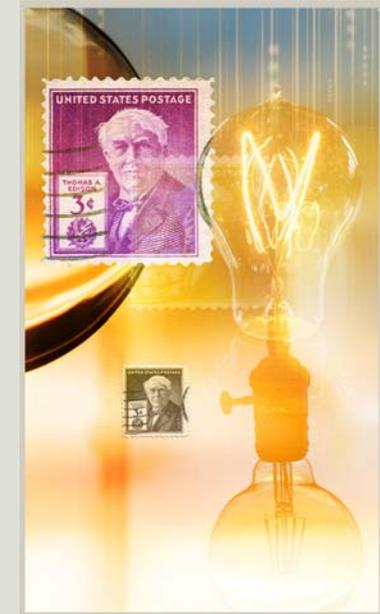
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