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The Aspire Tax Credit Program

The New Jersey Economic Recovery Act of 2020 (“ERA”)

P.L. 2020 (Chapter 156), as amended by P.L. 2021 (Chapter 160),
P.L. 2021 (Chapter 46), P.L. 2023 (Chapter 98) and P.L. 2025 (Chapter 2)
Regulations, NJAC 19:31V-23 et seq.

April 2025

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What’s new for Aspire?

NJEDA is accepting online applications:

https://www.njeda.com/aspire/

- **The Aspire webpage has a summary of the program eligibility, award size, and rules including:**
  - A Sample Application with details on all of the materials needed
  - NJEDA Board memo with program summary and goals
  - Regulations (NJAC 19:31-23 pre 12/2023 and NJAC 19:31V-23 post 12/2023)
  - Description of the Reasonable Return on Investment Analysis
  - Description of the Net Benefit Test applicable to Commercial Projects
  - Scoring Criteria
  - Green Building Standards
  - Mapping Tool for determining eligible incentive locations
  - FAQs

NJEDA intends to issue new regulations to implement P.L. 2025 Chapter 2

Program sunsets on March 1, 2029, unless extended by the Legislature.

The Aspire Program
Sections 54-67 of ERA
Sections 22-29 of P.L.2023, C.98

Aspire Awards based on percentage of total project cost (but no greater than financing gap or project cap).

Overview: Aspire is the replacement for ERG. It provides tax credits to a developer based on a percentage of total eligible projects costs.

<u>Regular Aspire Award</u>

- Up to 50% of eligible project costs for most projects.
- Up to 85% of eligible project costs for projects located in a Government Restricted Municipality (GRM):
  - AC, Trenton and Paterson.
- Up to 80% of eligible project cots for projects located in new GRMs: New Brunswick, Camden, East Orange
- Up to 60% if located in a Qualified Incentive Trace, Enhanced Area, MRI 50+ Municipality
- Up to 60% for new residential construction that receives "4% allocation" Low Income Housing Tax Credits.

<u>Transformative Aspire Award</u>

- Up to 50% of eligible project costs for a Transformative Project except:
  1. 80% if located in GRM
  2. 60% if 4% allocation of Low Income Housing Tax Credits
  3. 60% if located in a Qualified Incentive Tract, Enhanced Area, MRI 50+ Municipality

* Total project cost (eligible cost) does not include land acquisition, unless the project is in a GRM (up to 20% of eligible costs).

Aspire Tax Credit Project Caps

$60M Project Cap for most projects.(*)(**)

$90M Project Cap for certain projects and locations: (**)

- Residential projects that receive a 4% LIHTCs
- Qualified Incentive Tract (low income census tracts)
- Enhanced Area
- Municipalities with MRI Distress Score 50 or over

$120M Project Cap for projects in Government Restricted Municipalities (Atlantic City, Paterson, Trenton ("Original GRMs") and now New Brunswick, Camden and East Orange ("New GRMs"). (*) (**)

$400M Project Cap for Transformative Projects. (Aggregate cap for all phases combined)

- Must be located in an "Incentive Area," GRM, Distressed Municipality, or Enhanced Area (Enhanced Area includes Urban Transit Hub, five municipalities with the highest poverty rate, and three municipalities with the highest SNAP recipients). Film studio projects are not subject to these geographic restrictions and may be located anywhere in the state.
- Project must be completed within 5 years of signing incentive agreement, with 1 year discretionary extension.
- Amended to permit project phases under a "transformative phase agreement." All phases must be completed within ten years of signing the incentive agreement or the first phase agreement.

(*) Phase cap for phased projects.

(**) Regular Aspire Projects must be completed within 4 years of signing Incentive Agreement

Project Location

Utilize NJEDA Mapping Tool to determine if your project is located in an eligible incentive area.

Aspire Projects must be located in "Incentive Area":

- Planning Area 1 (Metropolitan)
- Aviation District
- Port District
- Planning Area 2 (Suburban) or Designated Center, but only if located within ½ mile of a rail transit station or high frequency bus stop
  (as determined by NJ Transit).

Transformative Projects must be located in:

- Incentive Area
- GRM
- Enhanced Area, or
- Distressed Municipality

Film Studio Project may be located anywhere in the State

Types of Aspire Projects

Commercial Projects:

- Predominantly commercial and if located in a GRM, contains 25,000 sf or more, or if located in any other municipality, contains 50,000 sf or more of office, retail, industrial, or film studios and related space. Amendment revised to include redevelopment projects, not just a building.
- May include parking component (but doesn't count toward sf minimum)

Commercial Projects – Health Care or Health Services Center:

- A commercial project can also be a redevelopment project comprised solely of a health care or health services center, which contains not less than 10,000 sf devoted to health care or health services where patients seek care and is located in a MRI 50+ distress score municipality, a distressed municipality or a qualified incentive tract.

Special Mission Non-Profit Project:

- Located in a GRM or an Enhanced Area that serves a special mission, to accomplish the public purpose of a non-profit that is a developer or affiliate. It cannot have more than 100 units of 100% supportive housing units for tenants with special needs or social services, and no more that 25,000 SF of commercial space for the provision of on site social service programs that require a license. These Projects are not subject to the net benefits test.

Types of Aspire Projects

Residential Projects:

- Predominantly residential for multi-family residency and may include parking
- Minimum project costs based on location
  - ✓ $17.5M if in a city with > 200,000 people (Newark and Jersey City)
  - ✓ $10M if located in a municipality with < 200,000 people
  - ✓ $5M if in a GRM or low income tract
- At least 20% of units must satisfy affordability controls
- Workforce housing is not required but counts favorably in project scoring
- There is no net benefits test for residential projects
- There is no minimum occupancy requirement for residential projects

Types of Aspire Projects (continued)

Transformative Projects:

Qualify for up to the below subject to a cap of $400M.

1. 85% of the total project costs located in Original GRMs (AC, Trenton, Paterson);
2. 80% of the total project costs for a transformative project that is located in New GRMs (New Brunswick, Camden, East Orange);
3. 60% of the total project costs for a residential transformative project that receives a 4% LIHTCs;
4. 60% of the total project costs for a transformative project located in a qualified incentive tract, enhanced area <u>or</u> a municipality with a Municipal Revitalization Index score of at least 50%; or
5. 50% of the total project costs for any other transformative project.

<u>Must meet the following criteria</u>:

1. Have a Project Financing Gap
2. Total Project Cost of at least $150M <u>and</u>
3. Include at least:
    a) 200,000 sf new or substantially renovated industrial, commercial or residential space for a project located in a GRM, <u>or</u>
    b) 250,000 sf of infrastructure space for film production (can be located anywhere in State), <u>or</u>
    c) 300,000 sf new or substantially renovated industrial, commercial or residential space for a project located in an enhanced area, <u>or</u>
    d) 500,000 sf new or substantially renovated industrial, commercial or residential space for a project located in an enhanced area for any other transformative project.
4. Cannot be more than 50% retail, <u>and</u>
5. For commercial projects (except film studios), must be of special economic importance as measured by the level of jobs (500+), new capital investment, opportunities to leverage leadership in high priority targeted industries or other State priorities.

Residential Transformative Projects

Must Demonstrate Special Economic Importance

For Residential Projects:

1. Be located in a GRM, Enhanced Area, Distressed Municipality or Incentive Area
2. Include 20% new residential units for low and moderate income households or workforce housing,
3. Net benefit test does not apply to residential projects (must be predominantly residential to be exempted).
4. Leverages the competitive economic development advantages of State's mass transit, higher ed. and other assets in attracting or retaining employers and skilled workers generally or in targeted areas by providing employment or housing.

Additionally, the project must have:

1. 700 new residential units, or
2. Mixed-use with 50,000 sf commercial space (excluding parking) and:
   - ✓ If in a GRM, 200 new residential units,
   - ✓ If in Enhanced Area, 300 new residential units, or
   - ✓ Any other Incentive Area, 400 new residential units.

Commercial Transformative Projects
Must Demonstrate Special Economic Importance

For Commercial Projects:

1. Either Creation of 500 new full-time jobs (based on average industry density per sf), Involves substantial renovation of a vacant commercial building, or certain projects located in Brownfield Development Area*,
2. Provides opportunities to leverage leadership in high-priority targeted industry (such as a developer making an industry leading investment in a new technology or high-growth sub-industry), and
3. Leverage the competitive economic development advantages of State's mass transit, higher ed and other assets in attracting or retaining employers and skilled workers generally or in targeted areas by providing employment or housing.

*Notes: A project with 250,000 sf related to film production does not need to meet criteria #1.

A project located entirely on land designated by the DEP as a Brownfield Development Area and includes at least $15,000,000 in environmental remediation shall be deemed to be of special economic importance.

Basic Aspire Program Requirements:

Equity

20% Developer Contributed Capital

- **20% of total development cost** including cost of land (this is <u>not</u> the same as Total Project Costs which does not include land acquisition, except for projects located in GRMs).

- **10% of total development costs** for projects in GRMs.

- "<u>developer contributed capital</u>" includes cash, deferred development fee, cost of feasibility study, property value less any mortgage. Or any other investment by the developer deemed acceptable by EDA regulations.
- Regulations define "equity" as developer contributed capital that can be cash, deferred development fee, costs for project feasibility (incurred within 12 months), property value less mortgage and other investment deemed acceptable by NJEDA.
- Equity shall include federal or local grants and tax credits but not RABs.

Basic Aspire Program Requirements:
Net Positive Benefit (Appendix C)

Commercial Projects must demonstrate that the incremental increase in State revenues will exceed the amount of tax credits needed to fill the financing gap.

- NJEDA will conduct a State Fiscal Impact Analysis and utilize the IMPLAN Model ("Impact Analysis for Planning) to measure a project's predicted economic benefit. Projects in North Jersey and South Jersey will use separate geographic-based data.
- For each application, 2 scenarios will be run: ongoing activities at the project and upfront construction costs.
- The model includes State taxes. (Municipal payroll taxes and property taxes for new construction may be included under circumstances.)
- NJEDA will model average employment scenarios, with regional averages for wages and industry standards for employment density per sf.
- By regulation:
  - Most projects must show 160% net benefit
  - GRM projects must show 125% new benefit
  - Net benefit does not apply to residential or special purpose mission projects, or a health care service center component or food delivery service component of a project.

Basic Aspire Program Requirements:
Net Positive Benefit (Appendix C) (continued)

- Commercial Projects* must demonstrate a minimum net benefit to the State of 160% of the tax credits, except:
- The following may demonstrate a net benefit of 125%:
  - A project located in a GRM,
  - A commercial project that contains 50,000 or more sf of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, with a total project cost of less than $50 million.
  - A commercial project that receives a Federal Historic Rehabilitation Tax Credit or a tax credit pursuant to the 'Historic Property Reinvestment Act.'
  - A commercial project that is located on a land owned by the federal government on or before December 31, 2005.
  - A project undertaken (a) by a major cultural institution, or (b) for a major cultural institution that has an ownership interest, to renovate existing space or expand services into additional space.

Basic Aspire Program Requirements:
Financing Gap and Reasonable Rate of Return (Appendix B)

Project Financing Gap: To be eligible for tax credits, the Applicant must show a financing gap. An Aspire Award cannot be larger than the amount of the Gap. Total Development Costs is utilized for this calculation. Financing Gap will be demonstrated by a below market rate of return.

- After taking into account developer equity and a reasonable and appropriate rate of return, and after good faith efforts to obtain loans and capital on a non-recourse basis, the amount of project costs remaining. NJEDA using JLL hurdle rate model for determining the reasonable and appropriate return on investment. NJEDA will use consultant for analysis of large and highly specific projects.

- **Financing Gap at Project Completion:** If NJEDA determines that the gap is smaller than projected at approval, NJEDA shall reduce the amount of tax credits or accept payment from the developer on a pro rata basis. (The Developer will have the option to make an equivalent payment to the State.)
- If there is no financing gap, the award will be forfeited.

- **For Residential Projects receiving LIHTC**: Based on both the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment for the entire project and when evaluating only the units financed with LIHTC awarded by the agency, the approval or deferred developer fees under the rules established by the agency.

Aspire Program:
Reasonable and Appropriate Rate of Return and Profit Sharing with the State

Profit Sharing with State:

- **At the end of the 7th year** of the eligibility period, EDA will evaluate developer's rate of return on investment. If the actual rate of return exceeds the reasonable and appropriate rate of return at the time of approval by more than 15%, developer must pay in escrow 20% of the amount in excess of the reasonable and appropriate rate of return.

- **After the final year** of eligibility period, if rate of return exceeds the reasonable and appropriate rate of return at approval by more than 15%, developer to pay 20% of excess to General Fund. If rate of return did not exceed reasonable and appropriate, escrow will be released to the developer.
- **Special Provision if State opts to Buy Back Tax Credits**: If the Treasurer exercises its optional right buy-back credits, if rate of return exceeds the reasonable and appropriate rate of return at approval by more than 10%, developer to pay 20% of excess to General Fund.

Recapture of Tax Credits

Certain Events could trigger NJEDA seeking to recapture tax credits already issued to the developer. Events include:

- A material misrepresentation in the application, completion certification, annual report, or related materials.
- Failure to submit financing documentation to NJEDA to evaluate the Reasonable and Appropriate Return on Investment.
- Penalties and interest may be assessed.
- NJEDA will not pursue recapture against the purchaser of the tax credits.
- NJEDA will not pursue a co-applicant who had no involvement in the basis for the recapture.

Forfeiture of Current or Future Tax Credits and Possible Recapture

Developer will forfeit current year and future tax credits (and possibly be subject to recapture) if:

1. Project changes negatively impact eligibility such as a change from a residential to commercial or vice versa.
2. Project approved as a film production project is no longer used for film production.
3. Without prior consent of NJEDA, developer changes any uses that were utilized to measure the net economic benefit. For a transformative project, the uses utilized to determine the anticipated employee occupancy count.
4. Developer changes the project to score less than the minimum.
5. Any labor harmony agreement is not satisfied.
6. For Commercial Projects, beginning in the 4th year, if the occupancy level is reduced to less than 60% during the eligibility period. Tax credits can resume once occupancy is at 60% again. Occupancy will be measured as the average monthly occupancy for the applicable period.

Aspire Program Details

Eligibility Period: The period during which a developer can claim a tax credit.

- ✓ 10 years for all projects.

Construction: Must not have begun prior to application, but phases are permitted. Completed within 4 years after executing incentive agreement, except for Transformative Projects, which get 5 years to complete (plus discretionary 1 year extension) or if phased, 10 years to complete all phases.

Green Building + Affirmative Action

Prevailing Wage: During eligibility period, construction work and building services.
If a tenant with an incentive occupies > 55% of building, applicable to entire building. Failure to pay prevailing wages shall result in forfeiture of the award at completion or on an ongoing basis (annual report).

Community Benefit Agreement: For projects ≥ $10M in project costs, must have agreement with EDA or municipality to provide benefits to community. A Redevelopment Agreement that provides equivalent benefits can satisfy this requirement. If the applicant is not in compliance with the CBA, the award will be forfeited. (CBA not required for residential projects in a GRM or 100% affordable projects.)

Aspire Tax Credits – Tax Liabilities Satisfied

- **Tax Liabilities satisfied:** CBT and Insurance Premium Taxes.
- A Tax Credit Certificate can be used by the Developer (i) in the tax period for which is was issued, (ii) in the tax period in which it was issued, (iii) or in any tax period during the eligibility period, without the need to amend the tax period for the tax period for which the certificate was issued. But no more than 10% of the total credits can be used in any one tax period.
- The Developer has a 7-year carry-forward.
- Tax Credits awarded to a partnership will pass through the partners or members prorate or pursuant to an allocation agreement. This allows the tax credit certificate to be issued to a partner or member to use or sell it.
- **Pledge:** Upon written consent of EDA and Treasurer, the Developer may pledge the right to receive the tax credits. Pledge details will be published on website for transparency.

Sale of Aspire Tax Credits – Transfer Certificates

- Developer can sell tax credits for no less than 85% of face value; except:
  - Residential projects that receive LIHTC must sell for no less than 65% of face value (before considering any discounting to present value),
  - Residential projects not receiving LIHTC must sell for no less than 75% of face value (before considering any discounting to present value).
- No subsequent sales after 1st transfer. However a bank that holds the certificate for collateral and forecloses on the project may transfer the certificate.
- A Transfer Certificate can be used:
  - (i) in the tax period for which is was issued,
  - (ii) in the tax period in which it was issued,
  - (iii) or in any of the next 3 successive tax periods, without the need to amend the tax period for the tax period for which the certificate was issued. But no more than 10% of the total credits can be used in any one tax period.
- The Transferee has a 5-year carry-forward.

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 Julie, Chuck, Keshav or your relationship lawyer.

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.

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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 in excess of 150 lawyers across more than 20 practice groups, the largest of which by volume of business are financial transactions, real estate, litigation and bankruptcy.

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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.