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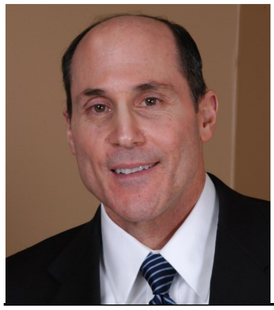

GROW NJ and ERG Tax Credit Programs Come to Atlantic City

A Summary of the NJ Economic Opportunity Act of 2014, Part 3 adopted October 24, 2014

By Benjamin Zeltner, Esq.

The NJ Economic Opportunity Act of 2013 (2013 Act) streamlined New Jersey's five existing economic development incentive programs in two; the Grow New Jersey Assistance (GROW NJ) program will be the state's main job creation and job retention incentive program, and the Economic Redevelopment & Growth (ERG) program will be New Jersey's key developer incentive program. The 2013 Act phased out the business retention and relocation assistance grant, the business employment incentive and the Urban Transit Hub Tax Credit programs. The 2013 Act was expanded recently with the adoption of the New Jersey Economic Opportunity Act of 2014 P.L. 2014 c.63 (2014 Act) to include Atlantic City among the benefitted municipalities along with making other changes in the 2013 Act. The GROW NJ and ERG programs are administered by the New Jersey Economic Development Authority (EDA).

A summary of the 2014 Act follows (much of this summary came from information on the EDA's website. The Act is over 40 pages. It is very detailed with pages of definitions. This summary should not be a substitute for a review of the entire 2014 Act.

The EDA will likely make further modifications to its regulations adopted in connection with the 2013 Act based on the 2014 Act. Levine Staller will monitor any changes to the regulations or the Act. If you have any questions or would like to discuss your business's eligibility for the economic incentives offered under the GROW NJ or ERG programs, please contact me.

GROW NJ PROGRAM

Benefits

Qualified eligible businesses receive tax credits per job per year for a period of up to 10 years for each new or retained full-time job. The tax credits may only be applied against corporate business taxes and insurance premium taxes of insurers. The credits can be sold to another entity. The amount of the tax credits per job varies depending upon the type and size of the project and is subject to overall caps ranging from $2.5 Mill. - $35 Mill. depending again upon the size of the project and where the project is located. There is an overall cap of the amount determined by EDA necessary to complete the project. Retained full-time jobs only count for 50% of the gross pay in calculating credits. Pure retail stores are not eligible for the credits.

Applications for assistance under the program must be submitted no later than July 1, 2019. There are significant application, approval, issuance and servicing fees due EDA depending upon the size of the tax credits.

Eligibility Requirements

1. The project must be in a Qualified Incentive Area or be a "Mega Project" as follows:
   - (a) Urban Transit Hub Municipality
   - (b) Garden State Growth Zone ("GSGZ") consisting of the cities of Camden,

Trenton, Patterson, Passaic and Atlantic City.

(c) Distressed Municipality

(d) Projects in a Priority Area

(e) Other eligible areas not in a Distressed Municipality or priority area, including a port district, Aviation District, State Planning Areas 1-3, portions of Meadowlands, Pinelands and Highlands and portions of Planning Areas 4a, 4b and 5.

(f) Projects classified as "Mega Projects"

(i) logistics, manufacturing, energy, defense or maritime businesses in a port district or businesses in the aviation industry located in an Aviation District (the area within a one mile radius of the boundary of the AC International Airport) with capital investment of at least $20 Mill. dollars and 250 jobs created or 1000 jobs created or retained; or

(ii) a qualified business facility located in an Urban Transit Hub having a capital investment in excess of $50 Mill. at which more than 250 full-time employees of a business are created or retained; or a project located in an existing area designated in need of redevelopment within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean or Salem counties having a capital investment in excess of $20 Mill. and at which more than 150 full-time employees are created or retained.

2. The project must meet or exceed minimum employment and capital investment requirements for anywhere from 10 to 50 new/retained full-time jobs (depending upon the business) and minimum capital investment ranging from $20 per square foot of gross leasable area to $120 per square foot of gross leasable area depending upon the type of project. These minimum employment and capital investment amounts are reduced by 1/4 to 1/3 of the foregoing amounts if the project is in a GSGZ or in Atlantic, Cape May, Burlington, Camden, Cumberland, Gloucester, Ocean or Salem Counties.

3. In GSGZs in Camden for projects qualifying under the Municipal Rehabilitation and Economic Recovery Act ("MRERA"), or in Atlantic City for projects regulated by CRDA, demonstrate that the award of tax credits is a material factor in the business decision to make the capital investment and locate in such GSGZ.

4. All projects must meet Green Building Requirements.

5. Within 12 months following the date of the application for approval to EDA, the business must submit progress information indicating that the business has site plan approval, committed financing for and site control of the facility.

6. Construction contracts must use prevailing wage labor rates and affirmative action requirements.

7. Maintain the project and related employment for 1.5 times the period in which the business received the tax credit.

8. Businesses receiving the tax credits must maintain 80% of its full-time work force and if it fails to do so, the business would forfeit its tax credit for that tax period until the business demonstrates the restoration of the number of full-time employees to 80% of the number of jobs specified in the Incentive Agreement.

9. Demonstrate that capital investment and the resultant creation of jobs will yield a net positive benefit of at least 110% of the requested tax credit amount. For projects in a GSGZ

under MRERA (Camden), the requirement is reduced to 100% of the requested tax credit.

10. The EDA will permit applicants with commitments under other EDA incentive programs to unwind their current commitment to take advantage of the GROW NJ program.

ERG PROGRAM

The ERG program addresses revenue gaps in development projects where there are insufficient revenues to support project debt service under standard financing. The program may also apply to projects that have a below market development margin or rate of return. The tax credits and grants under the ERG program can be awarded to multifamily residential units for purchase or lease or dormitory units for purchase or lease and redevelopment projects that are predominantly commercial including retail, office and/or industrial uses for purchase or lease. Developers are required to have equity participation of at least 20% of the total project cost.

In addition, the law establishes a new tax credit program for redevelopers that donate substantial public infrastructure to governmental entities.

ERG applications for residential projects must be submitted no later than July 1, 2016. Residential projects must be completed with a certificate of occupancy issued by July 28, 2018. ERG applications for commercial projects must be submitted no later than July 1, 2019. As in the case of the GROW NJ program, there are significant application, approval, issuance and servicing fees depending upon the size of the tax credit or grant.

Benefits

1. Grants for multifamily residential units for purchase or lease or dormitory units for purchase or lease.

2. Tax credits that can be assigned to lenders for project financing. For residential projects a tax credit of up to 20% of the total project cost and a bonus of an additional 10% (for a total of 30%) may be awarded if the project constructs and reserves at least 10% of the units for moderate income housing. These are for residential projects that do not generate tax revenues. For residential projects receiving tax credits, the term of the grant agreement will be up to 10 years. There are various minimum total project costs ranging from \$5-17.5 Mill. depending upon where the project is located. If in a GSGZ, the minimum total project cost is \$5 Mill.

3. For commercial projects, an incentive grant reimbursement of up to 20% of the total project cost with additional grant funding up to 40% if the following criteria are met:

- (a) the project is located in a GSGZ; or
- (b) the project is one or more of the following types or located in one or more of the locations below:
  - (i) located in a distressed municipality which lacks adequate access to nutritious food and will include either a supermarket or grocery store with a minimum of 15,000 sq. ft. or healthcare and health services and will include a healthcare or health services center with a minimum of 10,000 sq. ft. of space;
  - (ii) transit project;
  - (iii) located in highlands development credit receiving area or redevelopment area;
  - (iv) disaster recovery project;
  - (v) aviation project;
  - (vi) tourism destination project;

(vii) substantial rehabilitation or renovation of an existing structure.

For commercial projects, the term of the grant agreement may extend for up to 20 years and may not exceed an average of 75% of the annual incremental state revenues, and an average of 85% of the annual incremental revenues in a GSGZ.

Eligibility Requirements

1. The project must be located in a "qualifying economic and redevelopment and grant incentive area" which includes an Aviation District, Port District, Distressed Municipality, GSGZ, State Planning Areas 1 – 3, Regional Growth Areas, towns, villages or military or federal installation under the Pinelands Protection Act among other areas.

2. The developer must not have commenced construction prior to submitting an application to EDA.

3. A project financing gap must exist defined as having insufficient revenues to support the project debt service under a standard financing scenario. It can also apply to projects that have a below market development margin or rate of return. The grant is not a substitute for conventional debt and equity financing and applicants should generally have primary debt financing in place before applying. A rigorous analysis of sources and uses of funds, construction costs and revenues will be utilized.

4. Green Building Requirements must be met.

5. Construction contracts must use prevailing wage labor rates and meet affirmative action requirements.

6. Specific commercial project requirements;

(i) a comprehensive net benefit analysis must be undertaken to verify that revenues the state receives will be greater than the incentive being provided and that internal rate of return Hurdle Rate model must determine a funding gap.

(ii) pursuant to a net benefit analysis, for a state grant, the public assistance provided will result in net benefits to the state.

7. Specific Residential Project Requirements: for newly constructed residential units, the developer is required to reserve at least 20% of the residential units for low or moderate income housing as those terms are defined in the Fair Housing Act with affordability controls as required by the COAH rules unless the municipality has received substantive certification from COAH and such a reservation is not required under the approved Affordable Housing Plan or the municipality has been given a judgment or repose or a judgment of compliance by the court, and such a reservation is not required under the Approved Affordable Housing plan.

Benjamin Zeltner focuses his practice in the areas of Real Estate, Commercial & Business Transactions and Tax Appeals. He has represented developers large and small, from homeowners needing approval to construct a home addition to MGM MIRAGE, the second largest gaming company in the world, when it required a myriad of approvals to construct the roads and infrastructure improvements necessary to support the Borgata Hotel Casino & Spa at Renaissance Pointe in Atlantic City.

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