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Grow New Jersey Tax Credit Program Expanded

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One of the major features of the New Jersey Economic Opportunity Act of 2013 (A-3680) is that it builds upon and adds flexibility to the prior Grow New Jersey (Grow NJ) and Urban Transit Hub Tax Credit (UTHTC) tax credit programs, providing substantial incentives for large and small businesses that can create or retain jobs in New Jersey. Consistent with the overall design of the prior programs, it permits the NJ EDA to attract such businesses by providing tax credits that a recipient business can apply against its Corporate Business Tax and Insurance Premium Tax obligation, and it also permits the recipient to transfer the tax credits to another party having liability for such taxes.

The Jobs: Under the new Grow NJ program, businesses are eligible to receive tax credits with far fewer jobs than under the prior programs. For technology start ups or manufacturing, 10 new or 25 retained jobs will suffice; for targeted industries, 25 new or 35 retained jobs; and for other businesses, 35 new or 50 retained jobs. This feature is a significant evolution of the program from the original UTHTC program, which required a minimum of 250 jobs for a business to qualify. The jobs must be full time positions, but the definition of “full-time” is now more flexible. The tax credits must be a “material factor” in the decision to create the jobs and NJ EDA is responsible to investigate whether the jobs to be created or maintained are really “new” or at risk of leaving the State. In addition to the new/retained jobs requirement, the business risks forfeiture of the credits if it reduces its statewide workforce by more than 20%. The new law continues the requirement for payment of prevailing wages for each worker employed to perform construction work at the qualified business facility.

The Credits: The new version of the Grow NJ program also provides more flexibility because the dollar value of credits available to a qualified business facility is based on the number of new or retained jobs. The legislation offers a “base” dollar amount of credits per job, with the potential for multiple bonus credits per job, each category of bonus being designed to achieve specific policy objectives. These goals include channeling more tax credits to the southern counties of the State (which had not benefited significantly from the prior programs), encouraging businesses to locate in certain challenged municipalities such as Passaic, Paterson, Trenton and Camden, and attracting higher than average salary jobs, and/or more substantial facility investments. Retained jobs generally generate 50% of the gross amount of the tax credits, and newly created jobs 100%.

There are overall caps on the dollar amount of credits available for each project per year, however they are generous ones. For example, a “mega project” can generate up to $300 million over a ten year period, while a project in an eligible area which is not even an area specially targeted for development under the Act could have a smaller, yet still significant, maximum amount of $25 million over the same period. If the application exceeds $4 Million annually, EDA will also need to determine the “amount necessary to complete the project,” and that amount will be the maximum tax credits for the project if it is less than amount based on the caps referenced above. The total amount of tax credits that NJ EDA can approve for all projects in the State is no longer limited, as it was previously.

The other cap on the amount of credits per project is that credits can only be approved if NJ EDA finds that there will be a net positive benefit to the State equal to at least 110 percent of the requested tax credit allocation amount. The calculation is performed based on the now judicially sanctioned “RIMS” multiplier-based method employed by NJ EDA under the prior programs to estimate direct and indirect benefits.

A recipient business can claim the tax credits annually for up to ten years. In order to remain eligible for the credits, the business must continue to satisfy the program requirements, including maintaining the number of created or retained jobs for 1.5 times the term of the credits, and must continue to own or lease the qualified business facility during that period.

The qualified business is entitled to credits based on the investment of owners, landlords and/or tenants, as well as based on the jobs the user brings to the facility, making the relationship between the parties more complex and important to address.

The Investment: Here again the new legislation provides a sliding scale of tax credit benefits based on the amount invested in specific types of projects. Projects may qualify with investments as small as $20/sq. ft. for rehabilitation of existing industrial premises, $40/sq. ft. for rehabilitation of existing non-industrial premises, $60/sq. ft. for new construction for industrial use, and $120/sq. ft. for new construction for non-industrial use. A significant improvement is that the amount of the investment can now include the cost of land, provided land is acquired within two years prior to submitting the application. Generally, retail is not a qualifying business.

Transferring credits: The Division of Taxation and the NJ EDA may issue transfer certificates so that the tax credits may be sold or assigned. A market for the credits had already evolved under the previous version of Grow NJ and the UTHTC program, and the new program will continue to feed the demand for credits among buyers who need to offset their Corporate Business Tax and/or Insurance Premium Tax liability. As in the past, the credits can be transferred for no less than 75% of their face value. The need for ongoing compliance and a strong market for the credits—driven by both demand on the part of transferee businesses and by the desire of transferor businesses to realize value for their unused credits—ensure that attention to the detailed requirements of the program throughout the term will be more important than ever.

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This is a summary of a complex law, the regulations for which have not been fully adopted. You should consult an attorney and tax adviser for the law's particular application to your circumstances.

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