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CREDITS & INCENTIVES TALK WITH DELOITTE

Grow New Jersey: A Modern Day Case Study in Job Attraction and Retention

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While the federal government's focus on keeping jobs in the United States is a topic that continues to receive significant media coverage, state and local governments have been committed to job retention and growth for a long time. One of the earliest examples in U.S. history of an effort aimed at incentivizing business development took place in New Jersey. In November 1791, Governor William Paterson signed an act into law that created a tax-free environment for manufacturers, while allowing their employees an exemption from military duty (except in the case of actual invasion).[1] This resulted in increased manufacturing activity that was one of the factors that led to the establishment of the City of Paterson.[2]

Today, just as it was over 200 years ago, New Jersey is one of many states competing for the next generation of companies and qualified talent to propel both the national and the local economy forward. In fact, Paterson, the same city which was spurred by the creation of a tax free zone in the 1791 act, is one of five New Jersey cities that receives the most preferential treatment under one of New Jersey's newest economic development initiatives, the Grow New Jersey Assistance program ("Grow NJ"). Grow NJ demonstrates some of the ways a state may look to create and retain jobs in a competitive landscape.

Grow NJ program—incentive transferability is a significant feature

The Grow NJ program offers discretionary tax credits to businesses across various industries that meet broad eligibility criteria. A key component of the program is the transferability of credits, details of which were outlined in the March/April edition of this column.[3] Businesses are allowed to sell unused credits to other taxpayers, thus allowing start-up companies, for which cash flow is a premium and is often a source of job growth, and other companies with low or no tax liability the ability to more effectively capitalize on the Grow NJ program. Providing businesses the flexibility to sell unused credits for cash is not a new concept either for New Jersey or for other states, but the increased marketability of the credit is a feature that adds to its overall effectiveness.[4]

Although the program provides discretionary credits and requires a lengthy application and pre-approval process, the benefit calculation is formulaic (discussed further below), giving it the feel of a statutory credit. Companies can typically arrive at an accurate estimate of the value of the Grow NJ incentive associated with economic development well in advance of the application process, providing a valuable cost comparison for businesses weighing various out-of-state candidate sites.

For New Jersey's part, the return on investment can be calculated in advance, in order to determine if the credit package being awarded will yield at least a 110% net positive economic benefit to the state over a period of 20 years.[5] There is also a system of checks and balances in place to ensure a company meets its employment and capital investment commitments. The rules allow for full or partial recapture in those instances where performance-based criteria have not been met.[6]

Background and the basics

Grow NJ, in its current form, was created from the New Jersey Economic Opportunity Act of 2013 ("EOA") (later amended in 2014), which went into effect September 18, 2013.[7] The EOA merged five legacy incentive programs into two: the Grow New Jersey Assistance program and the Economic Redevelopment and Growth Grant program ("ERG"). The goal was to enhance business attraction, retention and job creation efforts and to strengthen New Jersey's competitive edge in the global economy.[8] The EOA phased out the Business Retention and Relocation Assistance Grant Program ("BRRAG"), Business Employment Incentive Program ("BEIP"), and the Urban Transit Hub Tax Credit Program ("HUB") and incorporated many of their elements into Grow NJ and ERG.[9] Grow NJ emerged as New Jersey's premier business incentive program and is viewed as lucrative for companies large and small across many industries.

Sites dubbed Garden State Growth Zones ("GSGZs") are the areas with the highest award potential and are defined as the four cities with the lowest median family income based on 2009 census data.[10] The initial four cities were Camden, Paterson, Passaic and Trenton, with Camden singled out in the EOA as the most in need. The 2014 amendment to the EOA added Atlantic City.[11] In these five cities, businesses are eligible for a base tax credit of $5,000 per new or retained job, per year, for a duration of up to 10 years.[12] A similar base tax credit is available in urban transit hub municipalities, such as Elizabeth and Newark, but only for new jobs.[13]

Generally, outside of GSGZs, retained jobs are eligible for a base credit of 50% of the new job value or less depending upon the capital investment made.[14] Other eligible areas include "distressed municipalities" ($4,000 per new job), "priority areas" ($3,000 per new job) and other locations for which the credit specifics are based on the relative affluence of the community.[15]

Base credits can be supplemented by bonus credits, which are frequently site and/or industry specific. In GSGZs, for instance, bonus credits can increase the credit value to a maximum of $15,000 per new or retained job.[16] In priority areas, distressed areas and urban transit hubs, bonuses can increase the tax credit to a maximum of $10,500, $11,000, and $12,000 respectively, per new job.[17] Bonuses can be awarded for projects in specific, targeted industries including transportation, manufacturing, defense, energy, logistics, life sciences, technology, health, and finance, but excluding a primarily warehouse or distribution business.[18] Bonuses can also be awarded to companies that make an excess capital investment in an industrial site, create or retain a large number of jobs or pay salaries in excess of city or county medians.[19] Bonuses can also be site specific and are awarded for locating in deep poverty pockets and/or areas of transit-oriented development.[20]

The program requires the filing of an application and pre-approval by the New Jersey Economic Development Authority ("NJEDA") before a project begins. Businesses applying must meet certain guidelines, and applications undergo significant review by NJEDA. A cost benefit analysis (location vs.

location) must be submitted as part of the application and must demonstrate that New Jersey is the more expensive option versus an out-of-state alternative.[21] Additionally, a CEO Certification is required, stating that Grow NJ is a material factor in a company's decision-making process.[22]

Once approved, companies must execute a binding legal agreement with the NJEDA. The project must meet certain performance-based and other criteria, such as: (1) completing third party agreed upon procedures with respect to its capital investment; (2) annual self-certification that employment goals have been met; (3) maintenance of 80% of statewide employment beyond the project site; and (4) remaining in New Jersey for a duration of 1.5 times the award period (i.e., 15 years for a 10-year award).[23] Moreover, employees in construction jobs at the project site must be paid county prevailing wages, companies must be mindful of affirmative action in the hiring process, and buildings must be constructed or renovated in accordance with green building standards.[24]

As of February 2017, more than 200 active Grow NJ projects have been approved since the enactment of the EOA, for a total award amount of more than $4 billion.[25] This assistance has fostered the creation of more than 27,700 estimated new jobs and the retention of more than 27,100 existing jobs at risk of leaving New Jersey.[26]

The incentives associated with the Grow NJ program can be substantial enough to impact a company's bottom line and the decision-making process relative to where and how to do business. What follows is a discussion of the experience of one company, for which a nearly $30 million Grow NJ benefit has the potential to alter the course of its business decision to expand in a state other than New Jersey.

Case study

XYZ, Inc. ("the Company") is a manufacturer that sells its products through retail, direct selling, branded, direct-to-consumer (internet and catalog), professional lines, television shopping, and direct response TV and radio.[27] In early 2016, the Company was considering an expansion. As part of that project, consideration was being given to relocating the Company's existing operations from New Jersey to New York, where it would implement plans to expand.

The Company has had strong ties to New Jersey with several existing facilities in the state. However, New York's ongoing efforts at marketing a tax-free environment for manufacturers, such as StartUp New York, led the company to consider a site in Rochester, New York, for its new manufacturing and assembly facility, a move which would have affected approximately 100 New Jersey jobs. Additionally, the Company had plans to implement an aggressive growth strategy and create an estimated 110 new jobs if the project moved forward in New York.

In doing a location versus location analysis, the Company found that a site in Paterson, New Jersey, would be more expensive on a per-square-foot basis than the Rochester, New York, option. The analysis included a comparison of one-time up-front costs such as the construction budget and initial equipment purchases, along with a 10-year comparison of ongoing costs such as lease rental rates and real estate taxes. Annual payroll costs were also part of the analysis, with the New York option yielding lower salaries overall.

With this expansion project under consideration, the Company worked with its consultants and the New Jersey Business Action Center ("NJBAC")[28] which had become aware of the Company's project. The NJBAC's core mission is to help create and retain jobs while encouraging private capital investment in New Jersey, working with businesses of all sizes. The NJBAC highlighted lucrative eligible incentive areas of the NJ Grow program, with potential benefits approaching $30 million. The Company took an active interest in NJBAC's proposal, the large value of the credit and with it the improved financial feasibility of locating in Paterson.

The Company's application was officially approved at a public board meeting held by the New Jersey Economic Development Authority. The Grow NJ award consisted of a base tax credit per job of $5,000 with additional bonus amounts for being a business in a targeted industry (i.e., manufacturing), for locating in a deep poverty pocket and in proximity to transit oriented development, and for making a capital investment in an industrial site above the required minimum. The project's net positive economic benefit to New Jersey was estimated at $19.5 million over 30 years. In computing this amount, New Jersey considered factors such as increased employee state income tax withholdings from job growth and retention and the additional sales and use tax revenue resulting from Company purchases.[29]

The credit marketplace—expanding the marketability and value of transferable credits

As noted above, one of the Grow NJ program's attractive features is the flexibility for a company to sell its unused credit to other New Jersey taxpayers. In this context, New Jersey has been part of a larger national trend. In New Jersey, transfers may not be made in an amount less than 75 cents on the dollar,[30] though the experience to date has demonstrated that credits are typically sold for a higher value. Before a credit can be transferred, a business must apply to the NJ Division of Taxation for a tax credit transfer certificate, covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business.[31] A buyer's list can be found on the NJEDA website.[32]

Online exchange databases, where companies can buy and sell tax credits, have been growing in popularity. These exchanges provide a platform for transacting and processing tradable state tax credits and provide companies access to real time incentive program information, including market pricing. These types of platforms and services specialize in educating buyers and sellers supporting a sustainable marketplace—not just for the New Jersey credits but for other credits throughout the U.S.

Conclusion

The Grow NJ program has been an effective tool at both attraction and retention of business. And, with the advent of credit markets and transferability, the NJ Grow program has become part of a larger and ever evolving landscape, allowing businesses the flexibility to leverage credits in nontraditional ways to improve effectiveness. Expanding or relocating companies should evaluate the opportunity for a Grow NJ award as part of any comprehensive site selection review.[33] Other states should also take note of the successful outcomes produced by the Grow NJ program.

[1] Joseph J. Seneca, James W. Hughes and George R. Nagle, *An Assessment of the New Jersey Business Employment Incentive Program,* at p. 1 (July 27, 2004); http://www.state.nj.us/treasury/pdf/beip.pdf.

[2] *Id.* at p. 1.

[3] Kevin Potter, Marcus Panasewicz and Crystal Nicholas, *Transferable state tax credits and incentives—an important element of tax planning,* 27 JMT 40 (March/April 2017).

[4] For example, New Jersey allows for the sale of net operating losses by certain eligible taxpayers. New Jersey Emerging Technology and Biotechnology Financial Assistance Act, N.J. Stat. Ann. § 34:1B-7.37 *et seq.*

[5] N.J. Stat. Ann. § 34:1B-244(a)(3). (Adjusted to 100% and a longer duration in some areas).

[6] Recapture provisions are detailed in the company specific incentive agreement.

[7] N.J. Stat. Ann. § 34:1B-242 *et seq.*; N.J. Admin. Code § 19:31-18.1 *et seq.*

[8] http://www.njeda.com/web/pdf/NJEconomicActof2013_summary.pdf.

[9] http://www.nj.gov/treasury/taxation/newlegislation2013.shtml.

[10] N.J. Stat. Ann. § 34:1B-243.

[11] N.J. Stat. Ann. § 34:1B-243.

[12] N.J. Stat. Ann. § 34:1B-246(b)(1) and (e).

[13] N.J. Stat. Ann. § 34:1B-246(b)(1) and (e).

[14] N.J. Stat. Ann. § 34:1B-246(e).

[15] N.J. Stat. Ann. § 34:1B-246(b).

[16] N.J. Stat. Ann. § 34:1B-246(d)(1).

[17] N.J. Stat. Ann. § 34:1B-246(d)(2)-(d)(4).

[18] N.J. Stat. Ann. § 34:1B-243.

[19] N.J. Stat. Ann. § 34:1B-246(c).

[20] N.J. Stat. Ann. § 34:1B-246(c).

[21] N.J. Stat. Ann. § 34:1B-244(d).

[22] N.J. Stat. Ann. § 34:1B-244(d).

[23] N.J. Stat. Ann. §§ 34:1B-245, 34:1B-247(d), and 34:1B-243.

[24] N.J. Admin. Code § 19:31-18.17; N.J. Stat. Ann. § 34:1B-244(a)(2).

[25] http://www.njeda.com/pdfs/reports/Approved_GrowNJ_EOA.aspx.

[26] http://www.njeda.com/pdfs/reports/Approved_GrowNJ_EOA.aspx.

[27] While the company in question wishes to be identified under a pseudonym, the factual representations in this case study are based on the company's actual experience and have been confirmed by the company as accurate.

[28] The NJBAC is a division of the New Jersey Department of State and reports directly to the lieutenant governor.

[29] As of the date this article was authored, the Company was in its final evaluation phase.

[30] http://www.njeda.com/pdfs/NJEDA-Business-Tax-Credit-Program-Buyers-List.aspx.

[31] N.J. Stat. Ann. § 34:1B-248.

[32] http://www.njeda.com/public_information/incentive_activity/grow_nj.

[33] N.J. Stat. Ann. § 34:1B-247. By statute, NJEDA will stop accepting applications for the program in July 2019.