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EXTERNAL ALERT

The New Jersey Economic Opportunity Act of 2013 Consolidates and Expands Various Economic Development Programs

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Overview

On September 18, 2013, Governor Christie signed into law The New Jersey Economic Opportunity Act of 2013 (“A3680”), which phases out three economic development incentive programs while expanding two others.[1] A3680 also provides specific incentives for the repurposing of former health care facilities as non-acute health support services centers and creates a Garden State Grow Zone program.[2] The new law puts greater emphasis on job creation and redevelopment instead of job retention. The effective date of A3680 is September 18, 2013.

In this Tax Alert we summarize these incentive program changes.

Summary of A3680

Phase out of three incentive programs

A3680 phases out the Urban Transit Hub Tax Credit (“UTH”), Business Employment Incentive Program (“BEIP”), and Business Retention and Relocation Assistance Grant Program (“BRRAG”). Approval of any new awards under these programs will not be made after December 31, 2013.

Expansion of two incentive programs

A3680 expands the award amounts and eligibility requirements for the existing Grow New Jersey Assistance Program (“GROW”) and the Economic Redevelopment and Growth Program (“ERG”). GROW is a tax credit program and ERG is primarily an incentive program aimed at capital projects. Both programs permit employers who make qualified capital investments to take substantial credits against corporate income taxes.[3] For GROW and ERG, the new law expands the applicable geographic eligibility boundaries and lowers the eligibility thresholds.[4] A3680 includes a sunset provision to enable a legislative review. Accordingly, the new law sunsets both GROW and ERG on July 1, 2019, thus prohibiting the New Jersey Economic Development Authority (the “Authority”) from considering applications for eligibility for tax credits under GROW and ERG after June 30, 2019.[5]

The amended GROW program increases New Jersey’s capacity to offer economic development incentive packages to New Jersey businesses. .The amended program expands the areas of the state within which businesses can qualify for GROW tax credits and reduces the capital investment and employment eligibility requirements for participation in the program. While expanding the geographic breadth of the program, A3680 provides for bonuses to drive development to smart growth areas in the state.[6] The thresholds are generally lowered for certain designated areas. GROW offers transferable tax credits of between $500 and $5,000 per year, plus bonuses per job created or retained for a period of up to ten years.

ERG is an incentive for real estate development projects that have a financing gap -- defined as having insufficient revenues to support the project debt service under a standard financing scenario. The incentive can also apply to projects that have a below-market development margin or rate of return.[7] The ERG incentive involves a “grant” of tax benefits offered on annual incremental state and local taxes for a period of up to twenty years. The grant may be up to 75% of the annual incremental state tax and/or local tax revenue or 85% if the company is located in a Garden State Growth Zone.[8]

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[1] N.J. Pub. L. 2013, ch. 161.
[2] *Id.*
[3] New Jersey Economic Development Authority, accessible at:
http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=1626&;
http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=1186&menuid=1422&topid=718&levelid=7&midid=734.
[4] N.J. Pub. L. 2013, ch. 161.
[5] *Id.*
[6] *Id.*
[7] New Jersey Economic Development Authority, accessible at:
http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=1186&menuid=1422&topid=718&levelid=7&midid=734.
[8] New Jersey A3680 Floor Statement (page 56) - Assembly 6/27/13 2R ACS, accessible at:
http://www.njleg.state.nj.us/2012/Bills/A4000/3680_S5.PDF.

Qualified Health Care Facility and Garden State Growth Zone

A3680 also provides a new tax credit against corporation business tax or gross income tax liability for capital investments made to repurpose former licensed health care facilities as licensed non-acute health care and health support services centers. The new law also provides that a Garden State Growth Zone ("GSGZ") Entity (development entity) is authorized to undertake the clearing, re-planning, development, or redevelopment of property within a GSGZ. A development entity that owns real property within a GSGZ and engages in a clearing, re-planning, development, or redevelopment activity on the property may be granted a property tax exemption on improvements to the property for any new construction, if certain requirements are met.[9]

Considerations

Taxpayers that had submitted an application under GROW or ERG before the enactment of A3680 but who had not received approval for the credits or had not executed an agreement with the Authority may want to consider amending or reapplying for the tax credit incentive award if they can obtain more favorable terms under provisions contained in A3680. The timeline to complete in-process BRRAG, BEIP, and UTH applications (and concurrently make a re-evaluation) appears to be only 90 calendar days after the enactment of the new law.[10] Further, taxpayers considering relocating to New Jersey, or taxpayers who are located in the state and are considering expanding, adding new capital investment, and/or converting certain redevelopment projects, should carefully consider the effect of A3680 and whether the extended incentive eligibility and new requirements may prove beneficial.

Contacts

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[9] New Jersey A3680 Floor Statement (page 73) - Assembly 6/27/13 2R ACS, accessible at: **http://www.njleg.state.nj.us/2012/Bills/A4000/3680_S5.PDF**.
[10] *Id*.