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The New Jersey Economic Recovery Act of 2020: An Overview of the Brownfields Redevelopment Incentive Program

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The New Jersey Economic Recovery Act of 2020, a seven-year, $14 billion package of incentive programs intended to encourage New Jersey job growth, property development and redevelopment, community partnerships, and numerous other economic development initiatives, was signed into law by Governor Phil Murphy on January 7, 2021.

This Client Alert focuses on the Brownfields Redevelopment Incentive Program enacted under the new legislation. The program represents an expansion of New Jersey's incentives for developers to clean up and redevelop abandoned, idle or underutilized industrial or commercial properties, so called "Brownfields," where expansion or redevelopment has been hindered due to environmental site conditions.

Background

New Jersey has had a Brownfield redevelopment incentives program since 1997, pursuant to which qualifying developers have been able to enter into agreements with the New Jersey Economic Development Authority (EDA) allowing for reimbursement of up to 75% of their remediation costs as particular tax revenues are generated following cleanup and redevelopment of qualified sites. That program, pursuant to which reimbursements have primarily been based on retail sales taxes, remains in place. A developer who is in the existing program is not eligible to seek further Brownfield incentives for the same project.

What's New

The new incentives will become available upon filing of an initial set of regulations being developed by EDA. While we will have to await publication of the implementing regulations to analyze the full extent of benefits and conditions, here is a preview of key points based on the legislation:

- This is a seven-year program that will involve a competitive application process. Qualifying developers will have to go through an extensive set of submissions to both EDA and the New Jersey Department of Environmental Protection (DEP) and will have to pay the costs of any third-party analyses that EDA or DEP deem necessary to solicit.
- If selected, the developer will have to enter a redevelopment agreement with EDA that includes commitment to a remediation deadline, projected remediation costs, and the submission of semi-annual progress reports.
- The maximum tax credits that will be available for all program applicants combined in any given year will be $50 million, subject to additional limitations on the total amount of tax credits under all of the different tax credit programs introduced by the new legislation.
- The maximum tax credit available for a qualifying project will be 40% of remediation costs incurred or $4 million, whichever is lower.
- The tax credit is applicable against the New Jersey Franchise Tax, which is the state's corporate business tax, but not to other taxes such as retail sales taxes that are eligible under the pre-existing 1997 Brownfield law and incentives program, with exceptions noted below where a developer seeks to transfer a tax credit.
- In addition to establishing Brownfield eligibility, the necessity of the credit to make the project economically feasible, project funding gaps, support of the project by the local governmental authorities and the like, the developer will also have to meet additional criteria to be developed by EDA in consultation with DEP, such as benefit to the community, enhancement of job creation and economic development, environmental justice considerations and diversity in the developer's organization.
- Qualifying developers will have to commit to complying with state green building standards, affirmative action requirements and prevailing wage rates.
- EDA may not enter a redevelopment agreement involving a retail business employing more than 10 employees, or a distribution facility employing more than 20 employees, unless the retail or distribution business enters a labor harmony agreement with a labor organization that represents retail or distribution center employees in New Jersey.
- For selected projects that then proceed under the requisite redevelopment agreement, developers will seek DEP certification of project completion in compliance with DEP requirements, and of remediation costs reasonably incurred.
- Upon DEP certification, EDA is to confirm whether the developer's obligations under the redevelopment agreement have been met, and if so, is then to award the tax credit.
- There are certain conditions and limitations pursuant to which a developer may apply to EDA to transfer the tax credit, and if the transfer is authorized, the tax credit may be transferred to an entity with a corporate business tax liability or insurance premium tax liability. Thus, while non-corporate

developers are not by definition precluded from applying for and receiving the tax incentives, it would appear that in order to monetize the incentive, a developer entity such as an LLC or partnership would have to be able to transfer the tax credit.

Next Steps

The EDA will be promulgating initial regulations regarding the Brownfields Redevelopment Incentive Program. The initial set will be effective for up to six months. We will keep you updated on this and other developments related to the New Jersey Economic Recovery Act of 2020.

Please contact the authors of this Alert with questions concerning the incentives outlined in this overview or to discuss your specific business circumstances.

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