



REAL ESTATE DEPARTMENT

ALERT

NEW JERSEY'S LATEST TOOL FOR ECONOMIC GROWTH THE GROW NEW JERSEY ASSISTANCE PROGRAM

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On Jan. 5, 2012, Gov. Christie signed S3033 into law, continuing the current administration's efforts to change the business climate in New Jersey by encouraging economic development through tax credit programs. S3033 establishes the Grow New Jersey Assistance Program (Grow NJ Program), a \$200 million tax credit incentive program administered by the New Jersey Economic Development Authority (Authority) that encourages the growth of New Jersey companies through capital investment, new job creation and existing job retention.

S3033 allows qualified businesses to receive a base tax credit of \$5,000 per year per retained or new job associated with the business for a period of ten years. S3033 also provides for a potential bonus tax credit of \$3,000 per year per retained job awarded at the Authority's discretion based on the following criteria: (1) industries identified by the Authority to be desirable; (2) businesses that are located in qualified areas adjacent to or within walking distance or short-distance-shuttle service of a public transit facility; (3) a business that creates jobs that are greater than the average full-time salaries within the State (as determined by the Department of Labor and Workforce Development); and (4) businesses that are located at project sites that have been negatively impacted by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Program.

The business may apply any tax credit awarded towards its New Jersey State Corporate Business Tax (or similar tax for life insurance companies) and may also sell the tax credits pursuant to the certain transfer procedures. The annual tax credit that may be taken by a business is limited to the lesser of: (i) 1/10th of the required capital investment, or (ii) \$4 million.

Additionally, if the business creates less than 100 new full-time jobs, it may only claim a tax credit for these new jobs up to the amount of retained full-time jobs.

The Grow NJ Program is targeted toward businesses that are either currently located or looking to be located in a business facility within a "qualified incentive area." S3033 defines "qualified incentive area" as:

- An area designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or any urban, regional or town designated center under the State Development and Redevelopment Plan;
- An area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to N.J.S.A. 13:17-21;
- Any land owned by the New Jersey Sports and Exposition Authority established pursuant to N.J.S.A. 5:10 1 et seq., within the boundaries of the Hackensack Meadowlands District as delineated in N.J.S.A. 13:17-4;

- A pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to N.J.S.A. 13:18A-1 et seq.;
- An area designated for development, redevelopment or economic growth within the Highlands Region;
- Federally-owned land approved for closure under any federal Base Closure and Realignment Commission action; or
- Any property consisting of a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available for occupancy for a period of over one year or is negatively impacted by the approval of a “qualified business facility” under the Urban Transit Hub Tax Credit program.

To be eligible for the Grow NJ Program, a business must demonstrate the following:

- The business will make, acquire or lease a capital investment of at least \$20 million at a qualified business facility (i.e. a business facility located in a qualified incentive area).
- At the qualified business facility, the business must: (i) employ at least 100 full-time employees in retained full-time jobs, or (ii) create at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract.
- The capital investment resultant from the award of tax credits will yield a net positive benefit to the state; and
- The award of tax credits will be a material factor in the business’s decision to create or retain the minimum number of full-time jobs for eligibility under the program.

The program contains the following additional qualifications/limitations:

- Applications under this program must be submitted to the Economic Development Authority by July 1, 2014, and must additionally submit documentation indicating that it has met the capital investment and employment specified in the project agreement for certification of its credit amount no later than July 28, 2017.
- The program caps the amount of credits available to \$200 million unless approved by the Authority. The program is additionally subject to the \$1.5 billion tax credit ceiling allocated to the Urban Transit Hub Tax Credit program.
- The program is not applicable to “point-of-final-purchase retail facilities.”
- The program may not be used in conjunction with the Urban Transit Hub Tax Credit program for a business.

The Grow NJ Program provides flexibility for a business’s use of the tax credits. Awarded, but unused tax credits may be carried forward for use by the business for 20 successive tax periods, subject to a total cap of \$150 million per tax year and \$1.5 million for the total combined value of tax credits under the Grow NJ Program and the Urban Transit Hub Tax Credit program. The tax credits may also be transferred by a business by applying for a tax credit transfer certificate from the Director of the Division of Taxation in the Department of Treasury and the chief executive officer of the Authority. This certificate can cover one or more years. The sale of credits cannot be for less than 75 percent of the transferred credit amount. However, tax credits may be forfeited if a business fails to maintain the program’s employment requirements.

The Grow NJ Program further requires an eligible business to enter into an agreement prior to the issuance of tax credits, which agreement shall set forth the following: (i) a detailed description of the proposed project which will result in job creation and retention, and the number of full-time employees; (ii) the term of the tax credits, and the first year for which the tax credits may be claimed; (iii) the required time period during which the business must maintain the project at a location in New Jersey and meet the full-time employee requirement (duration must be at least 1.5 times the number of years of the term of the tax credits); and (iv) provisions for recapture of the tax credits if the business fails to meet its covenants.

S3033 charges the Authority to consult with the New Jersey Division of Taxation in adopting regulations for the implementation and administration of the Grow NJ Program.

As we have reported on other programs, New Jersey remains a fertile ground for innovative developers and businesses that wish to take advantage of the State's various grants and tax credit programs. The Legislative Branch, by enactment of S3033, and the Executive Branch by signing this bill into law, continue to deliver opportunities to New Jersey and out-of-state businesses who are receptive to the more business-friendly environment fostered by the State. The Grow NJ Program is the most recent arrow in what is quickly becoming a formidable quiver of economic stimulus.

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