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NEW TAX CREDIT PROGRAM LAUNCHED TO ATTRACT URBAN TRANSIT-ORIENTED INVESTMENT

On the final day of the "lame duck" session last week, after just days of consideration, the NJ Legislature adopted the Urban Transit Hub Tax Credit Act to promote development projects in targeted urban rail transit hubs. Proposed by the Governor, and inspired in part by specific pending projects, the Act was approved quickly with limited review. While it establishes the mechanics and framework for a potentially powerful new incentive, the pace of the process resulted in an Act with many flaws and unnecessary restrictions. Many leading members of the "economic development" community, as well as several mayors and members of the Legislature, already are calling for amendments to refine and expand the program to make it more effective. Governor Corzine also acknowledged the need to broaden the legislation, stating the following at the bill signing "Because I believe this approach can work in other areas as well, I am asking the Office of Economic Growth to work with the Legislature and craft similar approaches for other appropriate areas in the State."

In its current form, the new Act provides substantial *potential* tax credits against a company's NJ State corporate income, insurance premiums or gross income tax liability in the amount of up to 100% of a project's capital investment. A project meeting the minimum capital investment threshold of \$75 million, and that employs at least 250 jobs at the facility (200 of which must be new jobs to NJ), may receive the credit, delivered in equal installments over a 10 year period. The tax credit decreases to 80% of qualified capital investments if fewer than 200 of the 250 jobs required to be located at the facility are not new to NJ.

Importantly, large tenants in such a qualifying facility may also be eligible for the credit so long as their allocable share of capital investment exceeds \$25 million. The "sample project" below illustrates how these inter-active requirements would work:

SAMPLE PROJECT: Assume that a new facility of 250,000 sf is constructed for an all-in cost of \$300 psf, thus satisfying the minimum capital investment of \$75 million. A tenant leasing 83,000 sf (about 33%) of this facility would be able to claim the \$25 million minimum capital expenditure. Let's further assume an office standard of 250 sf per employee, yielding 332 total employees (at least 200 new NJ jobs). This project would be eligible to claim a credit against its corporate tax up to \$2.5 million each year for 10 years. Although the legislation is somewhat ambiguous, we believe the tenant also would receive a credit for most of its *own* investment in fit-out, FF & E and technology, adding to its allocable share of investment in the building, increasing the credit above the \$25 million minimum.

ELIGIBLE LOCATIONS: Only nine cities are eligible for the program including: Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson and Trenton. In order to meet the program parameters, properties within these cities must be located within a *one-half mile radius*

surrounding the “mid point” of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area. (Light rail stations were excluded.) The Commerce Commission, which will be administering the new program, believes it has the regulatory discretion to draw more realistic market-based boundaries to track actual development parcels, and avoid the anomalies that would result from strict adherence to the radius limitation.

RESTRICTIONS: Numerous requirements and limitations may reduce the actual *realizable* value of the program for many companies, including:

- State law arbitrarily prescribes a hierarchical application of the various tax credit programs based upon the date in which the authorizing legislation was passed. For example, if a firm received Research and Development Tax credits, those credits would be applied first.
- If the employment drops below the statutory minimum of 250 employees at the facility, the company forfeits the credit for that year and until the minimum is restored. Similarly, if the requirement of 200 new NJ jobs drops below the minimum, the credit will be reduced by 20% for the current period and all subsequent periods until the minimum is restored.
- Employers eliminating more than 10% of their statewide jobs forfeit their outstanding tax credit amounts for the given tax period; the credit can be restored following documentation that the workforce threshold levels have been achieved.
- Credits can *only* be redeemed in the year they are earned (i.e., no carry-forward or back) and are **non-transferable**. However, fractional owners of pass-through entities (e.g., partnerships) can utilize their pro rata share of the credit earned by the entity.
- The credits cannot be transferred to a purchaser of the qualified facility; however, a tenant’s credits will not be affected by a change in ownership of the facility.
- Tenants forfeit their credits in the event of a sublease of all or a portion of the space.
- Participation in this tax credit program restricts companies from using the same capital and employees to qualify for other NJ economic development programs, most notably, the Business Employment Incentives Program (BEIP). As such, a detailed analysis of the potential net realizable value achievable under *each* potential incentives program is required. The analysis would need to evaluate the level of new versus retained jobs, the compensation levels of the new jobs which directly effects BEIP value, the level of capital investment, level of tax liability, and related issues.

BEST SUITED: Companies that are best suited to maximize the benefits of the program are those that have large predictable state corporate tax liability, projects with a higher proportion of retained employees (while still meeting the minimum new job threshold), projects whose average wage for new jobs is either low to moderate or extremely high (the State has recently enacted caps which significantly diminish the value for wages beyond a certain level), and high capital expenditure per employee.

NEXT STEPS: BLS will be monitoring the rulemaking process, and has been asked to provide input on potential amendments to refine the program to make it more accessible, and thus also a more effective economic development tool. We also will be working with potential beneficiaries, both end-users and developers, to evaluate their eligibility under this and other incentives programs, and to structure projects to maximize their ability to access these potentially valuable new tax credits.

