"Finding the sweet spot – Grow NJ and ERG Grant incentives are fundamentally about bringing investment and jobs to the right location"

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If you want to get the best value from the new Economic Opportunity Act of 2013, you will most likely be successful if your business objectives are aligned with the often location driven public purposes that the Legislature sought to achieve with these new incentive tools. Owners or Tenants buying, developing and/or rehabilitating facilities, with businesses that bring jobs and investments to certain locations where the State seeks to attract them, can get considerably more assistance from Grow NJ credits than if those same users brought the same jobs to other Grow NJ eligible locations where the amount of the tax credits may not make the application process as worthwhile. Similarly the Legislature sought to incent developers to build in redevelopment plan areas by providing that applications can only be made for an Economic Redevelopment & Growth (ERG) Grant for a redevelopment project.

Before deciding where Grow NJ and ERG work best, it is important to determine whether you can meet a few key requirements for these incentive programs or you may wind up wasting time shopping for the right location.

First, one should not spend much time looking for help from the statute unless the financial incentive is really necessary, and there is a net benefit to the State. For Grow NJ tax credits, EDA approval will only be granted if the credits are a "material factor" in the decision making of the user (tenant or owner), and the EDA determines there is a net positive benefit to the State equaling at least 110% of the requested tax credits. For significant credit amounts (those generating $4 Million of credits annually), EDA will limit the amount of the credits to what is necessary to complete the project. An application for Grow NJ tax credits that stands a good chance of being approved will be one where the user is faced with covering costs of the project that include, for example, significant environmental costs, extraordinary costs of demolition, multiple small parcel acquisitions, and/or relocation expenses, or where a user is seriously considering other states for their investment where the costs are lower than in New Jersey.

Similarly for ERG, one needs be able to prove that there is a project financing gap. Also in non-residential projects, one must provide evidence that there will be a net benefit to the State or Local entity that is assisting the project.

Second, one must consider whether the costs of compliance with the prevailing wage requirements outweigh the value of the incentive program to the applicant. Where the location is one for which substantial Grow NJ tax credits or ERG grants are applicable, the incremental labor costs may well be worth it. In addition, there are certain kinds of construction, high rise for instance, or certain labor markets, where prevailing wage requirements do not present as much of a disincentive. Also the required energy-efficient technology compliance can also add costs to the project which must be considered in relation to the value of the benefits of both programs, although the benefits from reduced energy costs can offset those costs.

Third, if your project is residential or has a significant residential component, neither program provides as much assistance as if your investment is in a non-residential facility. Although the consensus generally is that it was unintentional, the current statute severely limits the ability to use the authorized ERG tax credits available for residential projects because it requires that the applicant must complete its project and submit a temporary certificate of occupancy no later than July 28, 2015. Legislative amendments may extend this deadline which if enacted would make residential development attractive with ERG credits. Of course, Grow NJ is a program designed to produce employment which residential projects typically only have to a limited extent, and therefore limits the applicability of Grow NJ to residential.

Fourth, for Grow NJ, you may find it hard to make the application worthwhile unless you are generating or retaining a substantial number of jobs. Also, it is important to recognize that you will be required to provide a sworn statement to evidence that jobs will be created, or that the retained jobs are at risk of being lost to another state or eliminated.

Fifth, for Grow NJ and for the residential tax credits authorized under ERG, businesses who are not able to use the tax credits themselves must learn the process of transferring credits, become familiar with the market of transferees, and be prepared to convince a buyer that their credits will indeed be there in future years because the business generating the credits will maintain the project at its location in New Jersey and will maintain the required number of jobs, for the required commitment period (generally businesses will likely need to sell the credits annually to mitigate the job maintenance risk).

Finally, the major point of this article is that, as with all things real estate, it is very much about location, location, location.

Grow NJ

While the amount of the tax credits under Grow NJ does increase if the nature of the jobs attract certain kinds of development (transit oriented) or certain types of jobs (for example, technology or manufacturing), the most significant credits are available in specific places where it is often challenging to redevelop. For example, if you are willing to bring 250 jobs to, and invest $50 Million in, a mega project in an “urban transit hub” (Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson, and Trenton), you may be able to achieve the maximum amount of the credits per job available under the Grow NJ program (base amount of tax credits of $5000 per job for up to 10 years). Bringing those same jobs to a “Garden State Growth Zone” municipality (Paterson, Passaic, Trenton or Camden), or to one of the recently added “urban transit hub municipalities” (Bridgeton, Mount Holly, Salem or West New York), can also generate base tax credits of $5000 per job. By comparison, the base amount of credits in other areas that are “eligible,” but perhaps not viewed as much in need of assistance is $500 per job, and the amount of credits could be further limited to 90% of the withholding taxes generated by the business at that location.

If the project is to be developed in a “distressed municipality” (such as Neptune, Orange or Phillipsburg), the project will be entitled to base amount of $4000 tax credit per job. If the project is to be developed in a business facility located in a “deep poverty pocket,” where by definition the poverty level is 20% or more, based on census tract information (for example, in Pleasantville or Wildwood), you would be entitled to bonus tax credits of $1500 per job.

There are caps on the absolute amount of credits for the project and on the maximum amount of credits per job which are generally higher in the case of mega projects or projects in a Garden State Growth Zone than in an urban transit hub municipality. Notably, the absolute project caps are quite substantial over a ten year period; they can range from $100 Million in the case of urban transit hub municipalities to $350 Million for a project in Camden.

The precise amount of the credits per job, and the specific locations to which the State seeks to attract jobs, is set forth in the new law, generally at N.J.S.A. 34:1B-246 but the theme is evident – bringing jobs and investment to the places where the Legislature sought to attract them will produce the best incentives. Location impacts not only the amount of the tax credits, but other requirements are more favorable under Grow NJ based on location, such as the lower employment requirements in certain South Jersey municipalities.

ERG

Similarly, with ERG applications, location is a major driver. If you are willing to undertake a redevelopment project-- one in an area for which the municipality has adopted a redevelopment plan, or a redevelopment project being undertake pursuant to the Redevelopment Area Bond Financing Law, or one being undertaken to satisfy certain State agency sponsored redevelopment objectives--then under ERG you can seek to recapture certain taxes to be generated by the project. As for residential ERG projects, most of the $600 Million of tax credits authorized for such projects is earmarked for specific locations.

Under ERG, the percentage of total project costs that can be funded with incremental taxes, providing assistance to make a tough project feasible, is greater in the locations where the Legislature seeks to attract development, for example in Garden State Grow Zone municipalities like Paterson. There are also certain taxes for which applications can be made for ERG Grants that are generated only in specific municipalities, such as hotel taxes or parking taxes. For local ERG applications, it is also important to consider the location from the perspective of whether it is likely that the municipality would be willing to forego certain of its municipal taxes to achieve its redevelopment goals.

Conclusion

The press has commented that the programs are so complicated that a new cottage industry of professionals is cropping up to assist applicants in making applications for Grow NJ and/or ERG. In fairness, the requirements are the Legislature's way of describing the carrot that is being offered to incent investment and job development to those portions of the State where New Jersey needs to rejuvenate and redevelop. When the business can help to satisfy the State's location driven goals, Grow NJ and ERG can indeed provide a very valuable and attractive tool for both the State and the user or developer to succeed.