Luring Business to New Jersey

Governor Chris Christie Signed into Law the New Jersey Economic Opportunity Act of 2013 Which Greatly Expanded Geographic Areas Where Companies Can Qualify for Tax Incentives

James A. Robertson

by James A. Robertson and Brooks E. Doyne

Brooks E. Doyne

New Jersey is often the butt of many jokes. Whether it is the gorgeous landscape viewed upon arriving in Newark Airport or watching Snooki on MTV, New Jersey is not always viewed favorably by outsiders.

However, while our lawmakers in the nation's capital were playing a game of chicken over a government shutdown and the debt ceiling, our New Jersey Legislature and Governor Christie found common bipartisan ground and enacted legislation that will greatly benefit the State and those who bring their business to New Jersey.

In an aggressive push by the State to promote job creation and redevelopment of areas impacted by Hurricane Sandy, the New Jersey Economic Opportunity Act was signed into law on September 18, 2013. After several fierce months of negotiation, a conditional veto by the governor of an earlier version of the legislation, the Act will modernize and improve the State's already successful economic development programs and send a powerful message to private sector employers to open business in the Garden State. Governor Christie has stressed the importance of competing against other states. "This new group of incentives will lead to making us more competitive with other states across the country," Christie said at a news conference. "Let's not kid ourselves. We're competing with other states every day for the economic pie." Applications should be submitted on or before June 30, 2019.

The purpose of the program is to encourage economic development and job creation and preserve jobs that currently exist in New Jersey but are in danger of being relocated outside the State. To be eligible for tax credits under the Act, a business must demonstrate, at the time of application, that the grant of tax credits and retention of full-time jobs will yield a net positive benefit to the State. The Act proposes to merge five economic development incentive programs, including the Business Employment Incentive Program and Urban Transit Hub Tax Credit Program, into two existing programs: the Grow New Jersey Assistance Program and the Economic Redevelopment and Growth Program, which are both administered by the New Jersey Economic Development Authority.

The Act also provides additional bonuses aimed at helping to rebuild tourism destinations battered by Hurricane Sandy, a priority of both the Christie administration and the Legislature. The bill addresses a clean-energy program fund, which is financed by surcharges on customers' electric and gas bills. The measure will allow developers to be repaid money they pay into that fund, dubbed the societal-benefits charge, and other utility taxes. Lawmakers and past administrations have historically diverted funds from the clean-energy program to help balance the State budget.

The Act, once 47 pages in length, grew to 82 pages. To better help understand the Act it is best to break it down. Sections 1-21 expands three economic development incentive programs administered by the New Jersey Economic Development Authority (EDA): (1) the Grow New Jersey Assistance Program (GNJAP); (2) the Economic Redevelopment and Growth Grant Program (ERGGP); and (3) the Urban Transit Hub Tax Credit Program (UTHTCP). Sections 22-34 of the Act, entitled New Jersey Residential Foreclosure Transformation Act, established the New Jersey Foreclosure Transformation Program as a temporary program within the New Jersey Housing and Mortgage Finance Agency (HMFA) for the purpose of purchasing foreclosed residential properties from institutional lenders and dedicating them for occupancy as affordable housing.

The Act is geared more toward the southern counties in the State. Of the $600 million in tax credits available for residential developments, $175 million will go exclusively to the city of Camden, while another $75 million could only go to projects in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem counties. Developers in the eight southern counties and growth zones would only have to invest one-third in their projects as compared to those in other parts of the State. The southern counties also would have to create or retain 25 percent fewer jobs. Further, the State has decided the definition of a full-time job would be loosened for projects that include a supermarket in Camden and the Atlantic tourism district. The Act also sets aside $100 million for the offshore wind power equipment that is manufactured in Paulsboro. Lastly, companies would be eligible for a $1,000 bonus tax credit for each job created from projects in the eight southern counties.

A business may apply to the Authority for a grant for any project which will create at least 25 eligible positions in the base years or will create at least 10 eligible positions in the base years if the business is an advanced computing company, an advanced materials company, a biotech company, an electronic device technology company, an environmental technology company, or a medical device technology company. In the case where the business is a landlord, the business may apply for a grant for any project in which at least 25 eligible positions are created in the base years.

A business, upon approval, shall be allowed a credit of 100% of its capital investment, made after the effective date but prior to its submission of documentation in a qualified business facility within an eligible municipality. To be eligible for tax credits a business must show to the Authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the municipality. The value of all credits approved will not exceed $1,750,000,000, but this amount may be increased by the Authority.

A business, other than a tenant, must make or acquire capital investments totaling not less than $50,000,000 in a qualified business facility, at which the business must employ not fewer than 250 full-time employees to be eligible for a credit. A business that is a tenant in a qualified business facility, having acquired capital investments of $50,000,000 must occupy a leased area that represents at least $17,500,000 of the capital investment in the facility and must employ no fewer than 250 full-time employees in the aggregate to be eligible for a credit. The amount of capital investment in a facility must be equal to the percentage of the owner's total capital investment in the facility. No tax credits are provided if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit. A business that is allowed a tax credit shall not be eligible for incentives if the capital investment or employment was the basis for which a grant was provided to the business.

Full-time employment must be determined as the average of the monthly full-time employment for that period. The capital investment is the percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the business facility not leased to tenants. A business shall be allowed a tax credit of 100% in a qualified business facility that is part of a mixed use project provided the facility represents at least $17,500,00 of the total capital investment, the business employs not fewer than 250 full time employees and the total capital investment is not less than $50,000,000.

In determining whether an investment will yield a net positive benefit, the Authority will not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job unless the CEO submits a certification indicating the existing jobs are at risk of leaving the State and that the CEO has reviewed information and determined the business intends to employ not fewer than 500 full time employees in the qualified business facility. When considering intra-State job transfers, the Authority requires the company to submit the following information: a full economic analysis of all locations under consideration by the company, all lease agreements, ownership documents and all lease agreements, ownership documents for the potential out-of-State location alternatives to the extent they exist.

For a qualified business facility that is located on or adjacent to the campus of an acute care medical facility a minimum number of full-time employees required for eligibility may be employed by any number of tenants and the capital exceeds $100,000,000. The net positive benefit yield shall be based on the benefits generated during a period of up to 30 years following the completion of the project, as determined by the Authority. The tax period ending after July 28, 2017 that remains uncertified shall be forfeited. The credit amount that may be taken for a tax period that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax period. Regarding a partnership, a partnership shall not be allowed a credit. Each owner will have to allocate that proportion of the credit of the business that is equal to the owner of the share, whether or not distributed.

Companies must be aware that the numbers needed to qualify for tax incentives must not falter. If at any point fewer than 200 full time employees are employed, the amount of credit shall be reduced by 20% for that tax period and each subsequent tax period until the 200 full-time employees are accounted for in new full-time positions. If the number

continued on page 20

continued from page 19

reduces any lower than 20% of the number of full-time employees the same penalty applies. If located near an urban transit hub, if the number drops below 250 then the business must forfeit its credit for that tax period and each subsequent tax period, until the first tax period for which documentation shows the restoration of the number of full-time employees reach 250.

In allocating all credits the executive director shall take into account, together with other factors deemed relevant, input from the municipality, whether the project contributes to the recovery from Sandy, whether the project furthers specific State or municipal planning and whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant property. A developer shall make or acquire capital investments totaling not less than $50,000,000 in a qualified residential project. A developer shall be allowed a credit of up to 35% of its capital investment, or up to 40% for a project located in a Garden State Growth Zone.

The State shows employment is a major issue. “Jobs aren’t Republican or Democrat. They’re jobs. And people in this state need jobs,” said Senate President Stephen Sweeney (D-Gloucester). By adding jobs New Jersey will have a chance to compete with Pennsylvania’s generous tax incentives and New York’s dominance of the tri-state area. “What we’ve done here is created a bill for the entire state. Not just one region,” Sweeney said. It is hoped the entire state will benefit and more employers will look at New Jersey as a promised land for being successful. The lawmakers in Washington, DC should take heed: New Jersey politicians are figuring out a way to come together and move New Jersey forward in a positive way which will hopefully have a long-term positive effect on the future.

About the Authors

James A. Robertson is a Partner and head of the health care practice at McElroy, Deutsch, Mulvaney & Carpenter, LLP, with ten offices in New Jersey, New York, Connecticut, Massachusetts, Pennsylvania, Delaware, and Colorado.

Brooks E. Doyne is an associate in the health care practice of McElroy, Deutsch, Mulvaney & Carpenter, LLP.