Credits And Incentives Update

A Look at New Jersey's Economic Development Landscape

By Lee Winter and Steven Carter

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New Jersey Incentives

Much attention has been focused on the new New Jersey economic incentive programs but the first such program was enacted in 1791, when the New Jersey Assembly, in response to a request by Alexander Hamilton, the Secretary of the Treasury, passed what amounted to the first tax-free zone in the United States. Nearly 225 years later, thousands of such economic development incentive programs have come and gone in the United States. New Jersey, at the forefront of the nation with regard to economic incentives in 1791 is at the forefront again as the trend seems to be more complex, but more lucrative, economic incentive programs.

Over the last several years, New Jersey's economic development landscape has gone through several significant changes. Shortly after taking office in 2010, Governor Christie restructured the state's economic development functions by creating a marketing entity called "Choose New Jersey, a nongovernmental entitled by Lt. Governor Guadagno. New Jersey is one of only a handful of states that has charged a nongovernmental agency with statewide marketing efforts for economic development purposes. Choose New Jersey's mission is to encourage and nurture economic growth throughout New Jersey, including making the state's most distressed cities engines for growth and opportunity. Choose New Jersey is supported by business leaders from many of the state's Fortune 500 and other top companies, privately held ventures, labor organizations, associations and nonprofits.

Two years after the creation of Choose New Jersey, Governor Christie made another important modification to the economic development landscape by creating the Grow New Jersey Assistance Program ("GrowNJ"). Since its enactment in 2013, GrowNJ has awarded incentives to over 114 projects worth approximately \$2.2 billion in credits[1] for an average award of \$19 million. This complex incentive program has already seen several modifications and amendments and this column will review the GrowNJ program and some of the most significant modifications.

History

On September 18, 2013, Governor Christie signed into law "Bill A3680 New Jersey Economic Opportunity Act of 2013,"[2] ending a nine-month approval process. The bill started with 47 pages and ended with 82 pages. It was mentioned several times by various state-level economic development officials, as well as the bill's primary sponsor, that the goal was to simplify and unify the state's five existing programs,[3] which included:

- Business Employment Incentive Program
- Business Retention and Relocation Assistance Grant Program
- Urban Transit Hub Tax Credit Program
- Economic Redevelopment and Growth Program ("ERG")
- Grow NJ[4]

As mentioned above, the goal was to simplify and unify the state's five existing programs, as all of the programs had different rules, type of benefits, minimum job requirements and capital investment requirements.[5] The five programs are now consolidated into two programs, which include the Grow NJ and the ERG. Both of these programs provide state-level credits instead of cash grants. The Grow NJ Program is the most popular of the two remaining programs, as highlighted by the $2.2 billion in awards.

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Since its inception, there has been one modification to the Grow NJ program intended to reduce the size of awards going forward. The state is now on its second version,[6] and there are proposals for further changes.[7] The most significant changes to date have been:

- The limiter for retained jobs.[8] One of the big changes to the Grow NJ program was to address the economic and competitive issues facing existing New Jersey employers, so the Grow NJ program made economic incentives available for existing or retained employees. The new version of Grow NJ has reduced the value of that in certain instances. The new provision states that the economic incentives will be the lessor of the negotiated award or the capital expenditure on the project—thus the limiter.

  Example I. Company A has 50 existing jobs in 12,500 square feet of space and receives an award of $2,500 per job, per year, for 10 years for a total of $1,250,000.

  The company however is spending $500,000 on the project so the economic incentives would be limited to this lower amount.

  Example II. Company B has 50 existing jobs in 12,500 square feet of space and receives the same award of $2,500 per job, per year, for 10 years for a total of $1,250,000.

  Company B however is spending $1,500,000 on the project so the economic incentives would not be subject to this limiter and would remain at $1,250,000.

- Addition of Atlantic City for inclusion in a Garden State Growth Zone ("GSGZ").[9] Currently Trenton, Camden, Passaic, Paterson and Atlantic City have received this designation, which is for the most distressed areas and offers deeper economic incentive values as well, as lower job and expenditure qualifying minimums.
- Elimination of a look-back provision for expenditures. Previously, capital expenditures that were made prior to application were eligible costs that could be used to qualify for reaching the minimum capital expenditure requirement. In addition, acquisition costs were allowable costs. Except for GSGZ's above, that is no longer the case.[10]

Benefits

Considering that five programs were rolled into two, it should be no surprise that the benefits are more wide ranging than before, and the range of economic incentives is even larger. For example, a company located in one area of the state could get $500 per job, per year for 10 years and the same company, with the exact same facts except being located in a different area of the State could receive $5,000 per job, per year for 10 years, which is a tenfold difference.

The economic incentives are now all tax credits that can be used to offset a company's tax liability.[11] If a company does not have any tax liabilities, the credits can be carried forward or sold. In order to sell the credits, an application needs to be submitted to the New Jersey Economic Development Authority ("NJEDA") along with a certification that the company cannot use the tax credits. The market for these credits is reported to be trading at \$0.90–\$0.92 on the dollar, and there are many firms in the marketplace seeking to buy them.

The credits are issued annually by New Jersey after certification and verification by a third-party CPA firm. The term of the incentives can range from one to 10 years. While the length of the term is decided by the applicant, the employer's commitment to New Jersey, by statute, must be 1.5 times the benefit term. Often companies mistake commitment to New Jersey as being the same as the lease term, but they are not. A company could make a 10-year commitment to the NJEDA to stay in New Jersey but only sign a five-year lease and still qualify as long as it continues to remain in New Jersey.[12]

The economic incentives are comprised of a base amount, which, as stated earlier, varies greatly based on geographical area. In addition, there are 23 different categories of bonus credits based on factors such as:

- project type;
- job type;
- average salary;
- industry sector;
- proximity to commuter rail stations;
- located in a deep poverty pocket;
- located in a qualified incubator facility;
- located in a mixed-use development incorporating moderate-income housing;
- an industrial business where the capital investment is in excess of the minimum capital investment required;
- businesses with large numbers of new and retained jobs;
- a facility exceeding LEED Silver rating, and;
- projects that generates solar energy (on site) that equals at least 50 percent of the project's electric needs, and more.[13]

With all of the criteria and qualifications there are basically two "go/no go" categories of thresholds: Jobs and Capital Expenditures.

Jobs

The minimum required number of jobs not only varies by industry sector, it also varies by type of job: New or Retained:

TABLE 1

Industry Sector	New	Retained
Tech/Startup	10	25
Manufacturing	10	25
Targeted Sector	25	35
All other sectors	35	50[1]

[1] P.L. 2014, Ch. 63, Section 3.

Another significant change from previous programs is that expenditure minimums are now based on a per-square-foot basis rather than total project cost. As with the job thresholds above, there are many different categories that determine the threshold and based on new construction or renovation and the type of industry:

TABLE 2

Project Type	Min. Capital Investment per Square Foot
Industrial - Rehab	\$20
Industrial - New Construction	\$60
Office- Rehab	\$40
Office - New Construction	\$120[1]

[1] P.L. 2014, Ch. 63, Section 3.

Approval Process

The Grow NJ incentive application process is formal. Unlike many other states where preliminary meetings with economic development officials might suffice, all companies seeking an economic incentives award must submit a complete application and receive NJEDA Board approval prior to making any commitment to a project in New Jersey. In addition, there are attestations and representations that may give companies pause. Finally, there will be long-term job commitments.

Among the more important representations and commitments:

- CEO (or similar officer) certifies that receiving the incentives is "the material factor" in the decision to proceed with the project;
- prevailing wage (union-wage equivalent) is required for all new construction or tenant improvement work;
- construction must comply with NJ's Green Building requirements, (lower than LEED Silver);
- companies are required to maintain 80 percent of project jobs statewide for 1.5 times the term of the incentives (maximum of 15 years), and;
- companies must offer a group health care plan to employees.

The NJEDA also requires a real estate analysis showing the cost differential between New Jersey and the other alternative, competing project location.[14] This is an important component of its analysis because the reason for creating and awarding these economic incentives is to address the cost differential between locations. The NJEDA has also ramped up its level of due diligence, and these applications are heavily scrutinized by the NJEDA and at multiple levels and

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committees. It is not uncommon for applicants to receive multiple rounds of questions. Companies that do not invest the proper resources to the process will find that they either are not approved or the project will have to be put on hold while the company goes back and forth with the NJEDA and then have to wait to see if they will be approved.

The NJEDA Board meets monthly, and at these meetings, the board votes on the economic incentives.[15] New Jersey has a strict "but for" requirement and a lease cannot be signed prior to the NJEDA Board vote.[16]

Compliance

The application process to secure the authorization for a Grow NJ incentive is complex and requires thorough attention. Once the authorization is complete, the award recipient has much more work to do to obtain the actual benefits. There are two parts to the NJEDA compliance requirements, which include an initial certification followed by annual employment verifications.

The initial certification requires the submission of a third-party CPA firm agreed-upon procedures ("AUP") attestation. This attestation provides the state with a formal process to verify that the company has met the minimum expenditures requirements, and it has qualified for inclusion towards the capital investment threshold.[17] The initial certification AUP also requires that the CPA firm review and verify that the proper employment levels have been reached within the proper timeframe. After the initial certification, the company will be required to have a CPA firm annually review the employment levels and certify that the jobs are being maintained in accordance with the incentive agreement. This compliance process, in effect, places the audit responsibilities of the annual awards squarely on the shoulders of the Grow NJ incentive recipient rather than the state. The costs associated with the AUP process will also be borne by the company and not the state.

Example. The economic incentives available to the same company can vary widely as shown in the example below.

1. NYC company specializing in the field of Life Sciences
2. Company moves 100 jobs to Jersey City, NJ.
3. The company pays higher than average salaries to its employees
4. Company fits out its new offices to the Leadership in Energy and Environmental Design's ("LEED") Silver rating
5. Company generates solar energy onsite

TABLE 3

	Scenario I "Transit Hub Area"	Scenario II "Eligible Area"
Base Credit	$5,000	$500
Bonus Credits		
Transit Bonus	2,000	-
High Salary	250	250
Targeted Industry	500	500
LEED Silver	250	250
Solar power generation	250	250
Credit Per Year per Employee	$8,250	$1,750
Total Credit per Year	$825,000	$175,000
Total Incentives per Square Foot*	$36.67	$7.78

** Density of 225 sf per employee*

Conclusion

The economic incentives are tremendously valuable and often the "game changer" in the battle among states for jobs. Companies that see the long-term value in moving often hesitate to do so because of short-term concerns such as business interruption, disruption, employee attrition and high up-front costs and cash flow concerns. These new economic incentives are often powerful enough to overcome these hurdles and there have been many companies leaving other states for New Jersey.

From an economic development point of view, the economic incentives have been a much needed shot in the arm for some of the cities in New Jersey that need it most. The city of Camden for example, has seen two very large companies establish operations there because of Grow NJ, and in some areas of Camden real estate prices have doubled. This is great news for New Jersey, but there is a cost to the success as economic development incentives are contentious and expensive, as demonstrated by the $2.2 billion in awards. Moreover, political opposition has been growing, and each change to the program has been to reduce the Grow NJ awards. Governor Christie is term limited and further changes to the economic incentives could well be coming with a new governor. Grow NJ may be eliminated or continue to be modified, but rest assured, it is unlikely that all New Jersey economic incentives are going to go away anytime soon.

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ENDNOTES

1 New Jersey Economic Development Authority—Public Information—Grow NJ Assistance Program Activity Report, *www.njeda.com/public_information/incentive_activity/grow_nj* (last visited June 19, 2015).

2 P.L. 2013, Ch. 161.

3 Camden Redevelopment Agency—New Jersey Economic Opportunity Act of 2013, *http://camdenredevelopment.org/getattachment/Resources/9-24-13-Summary-New-Jersey-Economic-Opportunity-Act-of-2013.pdf.aspx* (last visited June 19, 2015).

4 P.L. 1996, Ch. 26; P.L. 1996, Ch. 25; P.L. 2007, Ch. 346; P.L. 2009, Ch. 90; P.L. 2011, Ch. 149.

5 *Id.*

6 P.L. 2014, Ch. 63.

7 New Jersey Economic Development Authority—Proposed Amendments, *www.njeda.com/web/pdf/reg/Economic_Opportunity_Act_of_2014_Part%203_Proposed_Amendments_1.20.15.pdf* (last visited June 19, 2015).

8 P.L. 2014, Ch. 63, Section 4.

9 P.L. 2014, Ch. 63, Section 2.

10 P.L. 2014, Ch. 63, Section 1.

11 *See* note 9, *supra*.

12 *Id.*

13 *See* note 8, *supra*.

14 *Id.*

15 New Jersey Economic Development Agency—Public Information—EDA Board Information—Schedule, *www.njeda.com/eda_board_information/schedule* (last visited June 19, 2015); New Jersey Economic Development Agency—Public Information—EDA Board Information—Agenda, *www.njeda.com/eda_board_information/agenda* (last visited June 19, 2015).

16 P.L. 1992, Ch. 79.

17 New Jersey Economic Development Agency—Adopted Amendments, *www.njeda.com/web/pdf/reg/NJEDA_Adopted_New_Rules_Amendments_Grow_NJ_ERG_UTHTC_BEIP_and_BRRAG_6.18.12.pdf* (last visited June 19, 2015).