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New Jersey “Emerge” Job Creation Tax Credit Programs

Economic Recovery Act of 2020 (“ERA”)

P.L. 2020, Chapter 156, as amended by P.L. 2021, Chapter 160 and
P.L. 2023, Chapter 98 (“Amendment”)

New Tax Incentive Programs

Statute – NJSA 34:1B-336 et al
Regulations – NJAC

January 2025

Emerge Program for Job Creation – Eligibility Summary

Sections 68-81 ERA and Sections 30-38 Amendment

- **Emerge is the revamped Grow NJ program for Job creation/retention and new capital investment. Potential tax credits range from \$500-\$8,000 per job depending on location, new vs. retained job, industry, et al.**
- **Eligibility for a tax credit award will depend on:**
 - Location of the project
 - Amount of Capital Investment
 - Level of Job Creation
 - Material Factor Test: whether the tax credits are a material factor in the decision to locate in NJ and an analysis of competitive out-of-state alternative location(s)
 - Net positive benefit to the State
- **First step is to file an online pre-application form with NJEDA to determine if the project fits within the scope of the program, followed by an initial meeting if the project is potentially eligible for EmERGE.**

Emerge Program Eligibility – Location and Capital Investment

- **Location:**
 - Government Restricted Municipality (GRM)
 - **Atlantic City, Trenton and Paterson,**
 - Distressed municipalities and Enhanced Areas (urban transit hubs),
 - State Planning Areas 1 and 2, and
 - Other areas identified via the NJEDA mapping tool on the EmERGE webpage.
- **Capital Investment Minimum:**
 - \$20 per SF for rehab of industrial space,
 - \$60 per SF for new construction of industrial space,
 - \$40 per SF for rehab of all other space,
 - \$120 per SF for new construction of all other space

Emerge Program Eligibility – Creating of New Jobs

- Program primarily incentivizes creation of new jobs.
- If Targeted Industry, minimum of 25 new employees
- If not a Targeted Industry, minimum 35 employees
- For a small business, 25% growth of its workforce with new jobs within eligibility period. Small business is a company in a targeted industry with fewer than 100 employees.

Targeted Industry: any industry identified from time to time by NJEDA which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation and other innovative industries that disrupt current technologies or business models.

Emerge Program Eligibility – Retained Jobs

- Retained jobs – those that already exist in NJ – can be incentivized only if there are a significant # of employees:
- **If combined with the minimum number of required new jobs, retention of:**
 - 150 existing jobs located in a GRM
 - 250 in a Qualified Incentive Tract or Enhanced Area municipality
 - 500 any where else in the State
- **Without the minimum number of required new jobs, a minimum of:**
 - 500 retained jobs in a Qualified Incentive Tract, Enhanced Area or GRM or
 - 1000 retained jobs located any place else in the state

Emerge Program Eligibility – Material Factor Test

What is the Material Factor Test?

A company will need to establish through documentation (CEO Certification and other corroborating documents/information) that NJ is in competition with another state for location of the business

Two part test:

- **Cost Comparison between NJ and another state**
- **Non-cost Comparison factors to determine whether the other state is really “in play”**
- **Incentive offer from another state**
- **If you are a life science company, is the business seeking to locate near other life science companies and ancillary businesses?**
- **If the business has an existing location in NJ, is there a synergy that you aren't likely to leave the state**

Emerge Program Eligibility – Net Positive Benefit Test

Net Positive Benefit to the State

The business must demonstrate that the capital investment and jobs will yield a net positive benefit to the State over the length of the Commitment Period:

- **At least 200% for Government Restricted Municipality or Mega Project**
Mega Project is defined as a project of special economic importance as determined pursuant to regulations and as measured by the level of new jobs, new capital investment, and opportunities to leverage leadership in high priority targeted industries.
- **At least 300% in a Distressed Municipality or an Enhanced Area (included urban transit hubs and high poverty municipalities)**
- **At least 400% for all other locations in the state**

Emergence Program – Eligibility and Commitment Period

Eligibility Period is the time period during which a business can claim, sell or use a tax credit.

- Begins in the year that NJEDA accepts the completion certification.
- Extends for a period of 7 full years. (May be extended for a pro-rated year)
- May be non-consecutive years

Commitment Period

- The Period of Time that the Business must maintain the project at a location in NJ with the minimum # of jobs for eligibility
- 1.5 times the length of the Eligibility Period
- The business may elect to extend the Commitment Period in order to meet the minimum Net Positive Benefit Test
- If the Business does not fulfill the Commitment Period, NJEDA could seek to recapture the value of the credits from the Business

Emerge Program – QBF and Withholdings Minimums

Emerge Program awards Tax Credits for each new full-time employee working at the Qualified Business Facility (“QBF”)

Minimum Square Feet of QBF:

- QBF must be able to accommodate at least 51% of the business’ new and retained employees

Minimum NJ Withholdings:

- Business must certify that not less than 80% of withholdings for new and retained employees are subject to NJ Gross income tax

Minimum Onsite Work:

- Employees must “primarily work” at the QBF, which means at least 50% of the time must be onsite.

Emerge Program – Tax Credit Calculation – Base Credit

NJEDA will award a Base Tax Credit for each New or Retained Full-time Employee based on the project location:

- \$4,000 per employee for projects located in a Government Restricted Municipality or a Mega Project
- \$3,500 per employee for projects located in an Enhanced Area
- \$3,000 per employee for projects located in a distressed municipality
- \$2,500 per employee for projects located in a Qualified Opportunity Zone or Employment and Investment Corridor
- \$500 per employee for projects in other Eligible Areas

Emergence Program – Tax Credit Calculation- Bonus Credits

NJEDA will award Bonus Tax Credits for each New or Retained Full-time Employee each year based on the project characteristics:

Partial listing of Bonus Categories:

- MRI Distress Score over 50 - \$1,000
- Extra CapX for industrial or R&D projects \$500 - \$1,500
- Extra Large # of New Jobs - \$500 - \$1,500
- Small Business - \$500
- High Median Salary - \$200 - \$1,000
- Targeted Industry - \$500/ With a Relationship with High Ed - \$1,000
- Free On-site Child Care - \$1,000
- Prison Re-entry Employment Program - \$500
- Exceeds Silver/Gold LEED - \$250/\$500
- Located in Opportunity Zone - \$1,000
- Board of Director Diversity - \$2,000

Emerge Program – Tax Credit Calculation

A Business will be eligible to obtain an annual tax credit equal to the Base + Bonus Tax Credit for each Full-Time Employee working at the QBF.

- New Full-time Employees entitle the business to 100% of the Base + Bonus
- Retained Full-time Employees entitle the business to 50% of the Base + Bonus

Annual Tax Credit Caps per Employee:

- \$8,000 GRM/Mega Project
- \$6,000 Enhanced Area
- \$5,000 Distressed Municipality
- \$4,000 Opportunity Zone or Investment Corridor
- \$3,000 Other Areas

Emerge Program – Other Limitations and Requirements

- Construction Workers and Building Maintenance Workers must be paid Prevailing Wage during the construction of the project and during the Eligibility Period.
- Affirmative Action for construction of project
- The QBF location may be moved subject to pre-approval of NJEDA and subject to potential reduction of tax credits based on new location.
- Sale of the Business Facility:
 - **If the Tenant has an EmERGE award and remains at the facility, the sale will not impact the Tenant's award.**
 - **If the facility owner has an EmERGE award and sells the facility, the new owner does not inherit the award.**
- Project Phasing will be permitted
- A Community Benefits Agreement with NJEDA and municipality
- **Annual Reporting Requirement by Business to remain in compliance.**

REDUCTION, FORFEITURE, OR RECAPTURE OF TAX CREDITS

- If the number of full-time positions drops by more than 20% at the QBF or State-wide, the tax credits for that year will be forfeited.
- If the salaries of the full-time jobs is reduced by more than 20%, then the tax credits for that year will be forfeited.
- If there is a reduction of jobs or salary at the project site of more than 10%, NJEDA will re-evaluate the net benefit and may reduce the award.
- NJEDA can seek to recapture of the value of the tax credits, or pro rata portion, if the business does not fulfill the Commitment Period or has made a material misrepresentation. Recapture is only pursued against the Seller of the Tax Credits, and not the Buyer.

Use of Emerge Tax Credits and Sale of Tax Credits

- Tax Credits may be used against a Corporate Business Tax (CBT), Insurance Premium Tax (IPT) liability
- The Business may carry unused tax credits forward for 7 successive years.
- **The Business can sell the Tax Credits.** The sale price must be at least **85% of face value** of the tax credits (before discounting to present value).
 - Tax Credits **cannot** be resold after an initial transfer.
 - There is an option for a tax credit purchaser to claim the credit on an IPT even before a transfer certificate is issued, but subject to the right of the State to recapture the tax credits applied if the transfer certificate is never subsequently approved and issued.
- A tax credit certificate may be surrendered to the Division of Taxation for a cash payment equal to 90% of face value if it has not been used or sold after 2 years of its issuance.

More Information on Emerge Program available on NJEDA website: NJEDA.gov

NJEDA has informative webpage on the Emerge program

Interactive Locator Mapping Tool will identify eligible locations.

Two step application process – (1) Submit an inquiry which will be reviewed by NJEDA staff for basic eligibility, (2) for projects that meet the basic requirements, submit a formal application and fee online.

NJEDA program regulations available on the website.

Questions, Comments?



Julie Tattoni
732.448.2559
jtattoni@windelsmarx.com



Chuck Liebling
732.448.2526
cliebling@windelsmarx.com



Keshav Poddar
732.448.2523
kpoddar@windelsmarx.com

To learn more about any of the programs under the New Jersey Economic Recovery Act of 2020, please contact Julie, Chuck, Keshav or your Windels Marx relationship lawyer.

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