



## US Multistate Tax Alert

New Jersey Economic Recovery Act of 2020 Creates a New Suite of Economic Development Programs

### Overview

On January 7, 2021 Governor Murphy signed into law The New Jersey Economic Recovery Act of 2020 (“A4”), which provides for new economic development incentive programs and makes modifications to certain legacy programs. The new law puts greater emphasis on job creation and redevelopment instead of on job retention. The effective date of A4 is January 7, 2021.<sup>1</sup> This Tax Alert summarizes the primary new programs and policies related to jobs, property development, small and early stage businesses, and film production.

### Summary of A4

#### Introduction of New Incentive Programs

A4 creates the New Jersey Emerge Program Act (“Emerge”), which is the successor to the Grow New Jersey Assistance Program (“Grow”) that sunset on June 30, 2019.<sup>2</sup> Emerge provides monetizable corporate business and gross premiums tax credits for new job creation and capital investment in the state.<sup>3</sup> Large retention projects may also be eligible under Emerge, if 1,000 or more jobs are at immediate risk of leaving the state.<sup>4</sup> In select areas, retention projects of 500 or more jobs may be eligible.<sup>5</sup>

Tax credits between \$500 and \$8,000 per qualified job per year for a period of up to seven years are available under the program.<sup>6</sup> Emerge focuses on specific targeted industries<sup>7</sup> and certain designated geographic areas, allowing for larger benefits based primarily on location, business activity, and other bonus criteria. Where a project falls within the benefit range is largely dependent upon these factors. At least 80% of the withholdings of Emerge project jobs must be subject to New Jersey income tax and the project facility must be capable of accommodating at least half of all project jobs.<sup>8</sup>

To be eligible for Emerge, an applicant must meet minimum job growth and capital investment thresholds. For businesses in targeted industries that do not qualify as a small business, at least 25 net new, full-time jobs must be created.<sup>9</sup> For all other businesses, 35 net new, full-time jobs must be created.<sup>10</sup> A “small business,” which are defined as those primarily in a targeted industry with fewer than 100 employees, must increase its existing workforce by 25%.<sup>11</sup>

Capital investment requirements are based on type of facility and whether the facility is existing or newly constructed.<sup>12</sup> Small businesses do not need to meet a minimum capital investment.<sup>13</sup> Once approved for an Emerge award, successful applicants have three years to complete the project and must abide by New Jersey prevailing wage, affirmative action, green building and other requirements.<sup>14</sup> Extensions for project completion may be available.

In addition, A4 creates the New Jersey Aspire Program Act (“Aspire”), which is the successor to the Economic Redevelopment and Growth Program (“ERG”) that sunset on June 30, 2019.<sup>15</sup> Aspire is designed to encourage development projects through the provision of awards to assist developers close project financing gaps.<sup>16</sup> Under Aspire, developers can obtain up to 45% of project costs in the form of tax credits if the project meets certain requirements.<sup>17</sup> The Aspire program allows both commercial and residential projects to qualify for tax credits. Maximum award amounts are capped at \$32M or \$50M per project, depending on the location of the project.<sup>18</sup> Projects must comply with New Jersey prevailing wage and affirmative action requirements.<sup>19</sup>

A4 also creates the Brownfields Redevelopment Incentive Program Act<sup>20</sup>, the New Jersey Innovation Evergreen Fund<sup>21</sup>, and a Personal Protective Equipment incentive program.<sup>22</sup>

## Modifications to existing programs

In addition to adding new incentive programs, A4 also modifies existing or legacy incentive programs. The Angel Investor Tax Credit Program will have an annual allocation increase from \$25M to \$35M and has added provisions for venture funds.<sup>23</sup> The New Jersey Technology Business Tax Certificate Transfer (NOL) Program will have an annual allocation increase from \$60M to \$75M<sup>24</sup> and a lifetime surrendered tax credit cap increase from \$15M to \$20M.<sup>25</sup> The Grow NJ Assistance Program<sup>26</sup> is amended to allow businesses to suspend obligations for the 2020 tax period, defer the application of a credit amount to a later tax period, and allow companies to terminate their existing agreement or reduce job requirements as a result of COVID.<sup>27</sup> The Film Tax Credit Program<sup>28</sup> now includes provisions for “New Jersey film partners” and “New Jersey film-lease partners,” and increases the credit allocation by \$200 million annually over 13 years.<sup>29</sup>

## Considerations

Taxpayers considering relocating to New Jersey, or taxpayers who are located in the state and are considering expanding, adding new headcount and capital investment, or converting certain redevelopment projects, should carefully consider the effect of A4 and whether the new programs may apply to their projects. Small businesses that may not have qualified under predecessor programs may now be eligible under the newly enacted programs, and these businesses should evaluate whether they may now receive a benefit.

Taxpayers that were approved for a Grow award before the program sunset should consider whether they are in compliance with the program and whether they expect to continue to remain in compliance. If compliance is a concern, Grow award recipients may seek to amend or modify the terms of their agreements under the new, more favorable Grow provisions. Taxpayers that are in compliance with their Grow award requirements may continue to monetize these credits.

Prior to an application being made available to the public, the New Jersey Economic Development Authority will need to establish rules and regulations which allows a 90-day public comment period.

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<sup>1</sup> N.J. P.L. 2020, c.156, at sec. 128.

<sup>2</sup> *Id.* at sec. 68-81.

<sup>3</sup> Credits may be sold for not less than 85 cents on the dollar or surrendered to New Jersey Division of Taxation, Department of the Treasury for a cash payment of 90 cents on the dollar. *Id.* at sec. 77 and 78.

<sup>4</sup> *Id.* at sec. 71.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at sec. 75.

<sup>7</sup> Targeted industries 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 business models. *Id.* at sec. 69.

<sup>8</sup> *Id.* at sec. 71.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at sec. 69 and 71.

<sup>12</sup> For a non-office facility, including R&D facilities, applicants must spend \$20 per square foot for existing facilities and \$60 per square foot on new construction. For offices, these amounts are increased to \$40 and \$120 respectively. *Id.* at sec. 71.

<sup>13</sup> Provided the small business demonstrates sufficient evidence of its intent to remain in New Jersey for the required commitment period. *Id.*

<sup>14</sup> *Id.* at sec. 71 and 74.

<sup>15</sup> *Id.* at sec. 54.

<sup>16</sup> *Id.* at sec. 56.

<sup>17</sup> Except for commercial projects in select areas, in which case the total tax credit allowed shall not exceed 50% of the total project cost. *Id.* at sec. 61.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at sec. 57.

<sup>20</sup> *Id.* at sec. 9.

<sup>21</sup> *Id.* at sec. 20.

<sup>22</sup> *Id.* at sec. 91.

<sup>23</sup> *Id.* at sec. 118.

<sup>24</sup> *Id.* at sec. 113.

<sup>25</sup> *Id.*

<sup>26</sup> N.J. Pub. L. 2013, ch. 161.

<sup>27</sup> N.J. P.L. 2020, c.156 at sec. 108.

<sup>28</sup> N.J. P.L. 2018 c.56.

<sup>29</sup> N.J. P.L. 2020, c.156 at sec. 111.