

# Genova, Burns & Vernoia

NEWS ALERT

July 27, 2009

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## Amendment to Urban Transit Hub Tax Expands Capital Investment Opportunities

Amendments to the "Urban Transit Hub Tax Credit Act" P.L. 2007, c.346 ("UTHTCA" or "the Act") as part of the broader New Jersey Economic Stimulus Act of 2009 ("Stimulus Act"), which became effective on July 27th, 2009, ease some requirements of the Act as well as increase the urban areas to which the Act applies.

The current program allows a business to qualify for a tax credit equal to the qualified capital investment if they make a capital investment of at least \$75 million in a qualified business facility within an urban transit hub and employ at least 250 people. This credit must be taken over a ten year period. This program will continue to apply in the following municipalities: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. The principal changes to the existing law are as follows:

### I. Provisions Easing the Investment Requirements for Businesses:

A. The capital investment threshold has been lowered from \$75 million to \$50 million for the owner of a qualified business facility, and from \$50 million to \$17.5 million for a tenant that occupies a leased area of the qualified business.

B. Tenant capital investment may be counted towards the owner's investment to the extent necessary to meet the \$50 million threshold. The new law clarifies that any capital investment made by a tenant above this amount will be added to the amount of tax credit the tenant is otherwise entitled to receive based on its portion of the net leasable area in the qualified business facility.

C. Investment and employment requirements may be met by affiliates of an entity.

### II. Provisions Easing the Employment Requirements for Businesses:

A. The definition of "full-time employee" has been expanded to include certain types of contract workers who perform work at the qualified business facility at least 35 hours a week. The definition has also been extended to include out-of-State residents working in New Jersey.

B. Where there is a reduction in the statewide workforce of the business below the threshold amount, the forfeiture of the credit takes effect only where that reduction was 20% of the total (rather than the current 10%). The determination of the threshold number of statewide

employees was amended so that a business cannot reduce its workforce by more than 20% in the last tax accounting or privilege period prior to approval of the tax credit.

C. If after approval of the tax credit there are less than 200 full time employees at the business location in new full time positions, the law requires a reduction of the credit by 20%. This provision does not apply if a business is relocating to an urban transit hub from another location in the same municipality provided that the business applies to EDA prior to January 1, 2010.

D. The law allows up to three tenants to meet the 250 employee requirement.

### III. Provisions Modifying Eligible Urban Transit Hubs:

A. The amendments include property located within a half mile radius surrounding the mid-point of one of up-to-two underground light rail station's platform areas that are most proximate to an interstate rail station. (This language applies to the light rail system in Newark.)

B. In Camden, a property can qualify for an urban transit hub credit if it is located within one mile of the mid point of a rail station.

C. A business location in an eligible municipality that is adjacent to or connected by rail to an active freight line, where that business loads and unloads rail cars, is now eligible for the benefits of the legislation.

### IV. Provisions Including Qualified Residential Projects:

A. The amendments extend the Urban Transit Hub Credit to apply to qualified residential projects which include any buildings, complex of buildings or structural components to buildings, including a mixed use project, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

B. A tax credit of up to 20% of the capital investment made after the effective date of the law will be allowed to qualifying developers who demonstrate that the project is likely to be realized with the provision of tax credits at the level requested, but it is not likely to be accomplished by private enterprise. The value of all tax credits for residential projects is initially limited to \$150 million.

C. To be eligible, a developer must make capital investments of at least \$50 million. If the developer acquires a qualified residential project, he also acquires the capital investments either made or acquired by the seller. The capital investment requirement may be met by the developer or one or more of its affiliates.

D. A developer can apply for a credit within a five year period starting from the effective date of the Stimulus Act (July 27, 2014), and must submit documentation for approval within eight years (July 27, 2017).

### V. New Requirements and Exclusions:

A. Existing provisions prohibit the use of employees and capital to qualify for the UTHTCA where the facility already receives a Business Employment Incentive Grant or a Business Retention and Relocation Assistance Grant based

on the same employees and capital. The amendments provide that receipt of benefits from the recently enacted InvestNJ Business Grant Program Act preclude use of the same capital and employees for the Transit Hub Credit.

B. The amendments require that an applicant for the credit demonstrate to the EDA that the State's financial support of the facility will result in a net benefit to both the State and the municipality.

C. The amendments place a ceiling on the total value of all credits under the program of \$1,500,000,000.

D. The New Jersey Economic Development Authority is required to set standards to encourage green building.

E. The new law clarifies that S-corporations as well as limited liability corporations are included as businesses that may be eligible to participate in the program.

F. Under the tax credit transfer certificate program, a holder of Urban Transit Hub Tax Credit may sell their Credit for consideration as long as the amount received by the business is at least 75% of the value of the credit.

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