NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

To: Members of the Board

From: Caren S. Franzini
Chief Executive Officer

Date: April 23, 2010

RE: Urban Transit Hub Tax Credit Program
Rule change

REQUEST

Amend the Urban Transit Hub Tax Credit program regulations to reflect that the EDA will include in the net benefit test only benefits derived from capital investments commenced after the date of the application.

BACKGROUND

The Urban Transit Hub Tax Credit Program ("Hub" program) was enabled by P.L. 2007, c. 346 (C.34:1B-209) and amended on July 27th, 2009 by P.L. 2009, c. 90. For commercial projects located within a ½ mile of transit stations ("Hub sites") in nine targeted cities (Jersey City, Hoboken, Newark, Paterson, Elizabeth, East Orange, New Brunswick, Trenton, and Camden), companies meeting the requirement of a minimal $50 million investment and employing a minimum of 250 full time employees at the Hub site could be eligible for a tax credit of 100% of their project costs (land excluded) allocated at 1/10th a year for 10 years. If 200 of the 250 full time employees are not new to the State then the level of tax credits the company is eligible for is reduced by 20% to 80 %. The amount of funds dedicated in the aggregate to the commercial and residential components of the HUB program is capped at $1.5 billion and projects need to be approved by the EDA board before January 12th, 2013.

NET BENEFITS TEST

Among other things, the amendments to the statute in July 2009 instituted a requirement that the project meet a "net benefits test". Importantly, the statute expressly requires that there be a net positive benefit to the state as well as to the city in which the hub site is located. While this test was intended as a check and balance between project development and taxpayer interests there was minimal statutory elaboration about how to conduct the analysis.

EDA has implemented the program with the guidance of the Attorney General's Office and with the assistance of its consultant Jones Lang LaSalle. Jones Lang LaSalle is a global financial and professional services firm specializing in commercial real estate services. Consistent with that guidance and as part of its due diligence in the administration of the net benefits test, the EDA reviews the financial characteristics of an applicant's hub project to determine if the State and municipality will experience a positive economic benefit (incremental tax revenue) as a result of the project that will receive the tax incentive.

In order to conduct this analysis, and consistent with its approach in similar reviews, the EDA developed a net present value financial model that predicts the economic activity a project will generate over a 20 year period. The econometrics are based on several factors such as location, industry, number of new jobs to the State, salaries, capital investment, etc.[1] This financial analysis recognizes the direct impact of jobs at the hub location, the one-time impact of construction jobs, and the indirect impact of spin off economic activity from the project. EDA then compares the present value of the taxes associated with these activities (primarily CBT, income and sales taxes) to the present value of the requested tax credits. A project is deemed to have passed the net benefits test if the tax value of the new business activity is at least 110 percent of the recommended amount of the tax credit. The EDA allows a company to amend its application to request a lower amount of credits such that it will pass the test thereby allowing the company to participate in the program.

A question has arisen with regard to the date used in determining what investments and activities should be included in the net benefit calculation. The statute provides that any capital investments incurred after January 18, 2008 are eligible costs. This forms the basis of the calculation of the amount of credit (80% or 100% depending on the number of new jobs). With respect to the net benefits test, the statute provides: "to be eligible for any tax credits authorized under this section, a business shall demonstrate 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 eligible municipality." Based on this language, EDA proposes to only include in the net benefit test items that were not committed to prior to the date of the application, or the time that substantive dialogue occurred between the applicant and staff which led to the submission of an application. These items would include investment in plant and equipment as well as new employees at the location. This implementation is consistent with the logic that since this program was imbedded in a stimulus bill presumably the legislature intended the award of credits to be a factor in the company's decision to hire staff and make the capital investment.

Predictably, in EDA's discussion with stakeholders, there have been a variety of interpretations about how the EDA should implement the net benefits test. Because it calculates the net benefit prospectively, the proposed approach may have the effect in some instances of reducing the amount of benefit derived from a project. The stakeholders have argued that, unlike its residential equivalent, a "but for test" (i.e. the project would not have been built without the credits) does not

1 EDA determines a standard of acceptable costs based on current industry and location data.

apply to the eligibility of capital investment in commercial projects. Because the proposed approach addresses the net benefit test rather than eligibility and because it focuses on the HUB serving as a catalyst to investment, staff recommends Board adoption.

RECOMMENDATION

To amend the Urban Transit Hub Tax Credit program regulations to reflect that the EDA shall include in the net benefit test only benefits derived from capital investments commenced after the date of the application.