A Review of the New Jersey Legislature's Latest Amendments to the New Jersey Aspire Program

What You Need to Know

On December 19, 2024, the New Jersey legislature passed legislation amending multiple sections of statute governing the New Jersey Aspire Program, most importantly as it relates to the state purchase of unused tax credits. The Aspire Program was created under the New Jersey Economic Recovery Act of 2020 (ERA) as a successor to New Jersey's Economic Redevelopment & Growth (ERG) Program, with the intention of utilizing tax credits to incentivize development projects throughout the state.

By way of background (and as outlined in an earlier Client Alert), New Jersey previously enacted legislation - in July 2023 - amending the Aspire Program and related funding requirements. Since that time, there has been a substantial increase in applications for the program. However, despite this positive outcome, lenders and investors were having difficulty underwriting the purchase of tax credits because there was not enough certainty regarding the value of those credits. The most recent amendments are, in part, an effort to provide an ultimate purchase option which developers can take advantage of, and to provide value developers can use while securing financing for their projects.

This Client Alert provides an overview of the new legislation's key impacts on Aspire Program eligibility and incentives.

State Purchase of Tax Credits

Significantly, the new Aspire amendments provide that the New Jersey Division of Taxation may purchase unused tax credits for an amount equal to no less than 85% of the credit amount. This change will come as a welcome revision for program applicants facing difficulties securing investors to purchase or lend against the tax credits without this built-in guarantee from the state.

It is very important to note that the new legislation leaves this purchase at the discretion of the Division of Taxation but does not currently create an obligation for the Division to make such a purchase. A companion bill (A5170) has been introduced, however, that sets forth the requirements of such a purchase and includes language that would obligate the state to purchase any unused tax credits for the Aspire Program. If this companion bill passes, it would provide lenders and investors with much-needed certainty related to the value of such tax credits. In turn, this would have a profound impact on the underwriting of the financing deals needed to support an Aspire Program application.

New Government Restricted Municipalities and Project Classification

The new Aspire amendments add Camden, East Orange and New Brunswick as three additional Government Restricted Municipalities (GRM) for a total of six GRMs, with the original GRMs being Atlantic City, Paterson and Trenton.

In addition, the new Aspire amendments define another type of project known as a "Special Mission Non-Profit Project." An eligible project of this nature would be located in a GRM or an enhanced area (as defined by the legislation) that serves a special mission - as determined by the Economic Development Authority (EDA) - that sets out to accomplish the public purpose of the non-profit that is either (1) the developer of, or (2) affiliated with such a project. Eligible projects (1) must include a maximum of 100 residential units; (2) must designate all of the residential units as affordable housing units, and (3) can only have a maximum of 10,000 square feet of commercial space, if any is included.

Increase in Percentage Cap of Eligible Project Costs

The latest Aspire amendments increase the percentage cap on eligible project costs, primarily for projects located in a GRM, as follows:

Shorter Pay-Out Period and Longer Carry-Forward Period

For any project located in a GRM or any project deemed a Special Mission Non-Profit Project, the pay-out period for the tax credits has been shortened by the new amendments from 10 years to 5 years. The pay-out period for all other projects remains at 10 years. Additionally, the new legislation increases the carry-forward period to any of the 5 successive tax periods for any purchaser of the tax credits.

We will keep you updated on any relevant developments and related actions of the EDA concerning the Aspire Program. Please contact the authors of this Alert with questions concerning the issues outlined in this Alert or to discuss your specific business circumstances.

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