

NEW JERSEY'S VERSION OF TAX INCREMENT FINANCING - KNOWN AS "ERGG" - SUCCESSFULLY CLOSING CONSTRUCTION FINANCING GAPS ON PROJECTS ACROSS THE STATE

New Jersey's residential "ERGG" program enacted in 2013 has been so successful that some "buckets" of the allocated \$600 million in tax credits are empty and others are quickly depleting. However, a prominent legislator recently introduced a bill to re-fund and recalibrate the program, as discussed below.

WHAT IS ERGG AND WHY IS IT SO SUCCESSFUL?

The Economic Redevelopment and Growth Grant ("ERGG") program, codified at N.J.S.A. 52:27D-489a et seq., and known as Tax Increment Financing or "TIF" in other states, is a developer subsidy that has already successfully closed construction financing gaps on shovel-ready projects throughout the State. The ERGG program is actually two distinct programs, each with different requirements: one ERGG program is for "predominantly" residential projects, including multifamily residential and dormitory units for purchase or lease, and the other ERGG program pertains to commercial projects, which may include retail, office or industrial uses (and even mixed-use including some residential housing) for purchase or lease. The New Jersey Economic Development Authority ("NJEDA") administers the ERGG programs and has established regulations for the programs at N.J.A.C. 19:31-4.1 et seq.



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ERGG PROGRAM ELIGIBILITY REQUIREMENTS APPLICABLE TO BOTH RESIDENTIAL & COMMERCIAL PROJECTS

To be eligible for an ERGG, a developer must not have commenced construction on the project site prior to submitting an application to NJEDA and must invest non-borrowed equity equal to at least 20% of the project cost. In addition, all other public and private sources of funds must first be pursued to the fullest extent possible, including obtaining or trying to obtain a local property tax exemption. It after inserting the above funds into the construction pro-forma, and utilizing a modest rate of return (usually 11-14%) and a realistic construction budget, there remains a project financing gap, NJEDA may award an incentive amount to effectively close the gap, up to a percentage of project costs as detailed below. All construction work associated with the project must meet certain prevailing wage, affirmative action, and green building requirements.

RESIDENTIAL ERGG PROGRAM

The greatest feature of the residential ERGG is the way the incentive amount is disbursed -- in the form of tax credits payable in equal increments over 10 years. Because the tax credits are pledgeable and transferrable, developers have been able to successfully utilize them as a source of upfront collateral or venture contribution in the course of attracting debt and equity investments in their projects.

The incentive amount for residential projects can equal up to 20% of project costs, or up to 30% of project costs if at least 10% of the project units are reserved as affordable housing units. (If the residential project includes newly-constructed residential units, developers are required to reserve at least 20% of those units as affordable housing units consistent with the Council on Affordable Housing ["COAH"] affordability controls, unless the municipality in which the project is located has received substantive certification from COAH or a judgment of compliance or repose and such reservation is not required under the approved affordable housing plan.)

Residential projects must meet a minimum project cost requirement: (i) \$17,500,000 if the project is located in a municipality with a population greater than 200,000 according to the latest federal census (i.e. currently Newark and Jersey City); (ii) \$10,000,000 if the project is located in a municipality with a population less than 200,000 according to the latest federal census or the project is a disaster recovery project; or (iii) \$5,000,000 if the project is located in Camden, Trenton, Paterson, Passaic or Atlantic City known as Garden State Growth Zones ("GSGZ"). Applications must be submitted to NJEDA by no later than July 1, 2016.

THE LESNIAK SOLUTION

With tax credits under the residential ERGG program running dry, Senator Raymond Lesniak recently introduced a bill (S-894) that would amend the program to allocate up to \$600 million in additional tax credits to encourage developers to build affordable housing in "distressed neighborhoods." A "distressed neighborhood" means, "a census tract, located within a distressed municipality, in which the median family income does not exceed 80 percent of the Statewide or applicable metropolitan median family income, as reported in the most recently completed decennial census published by the United States Census Bureau." To be eligible for these newly proposed tax credits, at least 20 percent of the residential units would have to be reserved for low- to moderate-income housing and at least another 20 percent of the units would have to be reserved for workforce housing. The legislation can be found here: http://www.njleg.state.nj.us/2016/Bills/51000/894_11.PDF.

COMMERCIAL ERGG PROGRAM

Unlike the residential program, the ERGG award on commercial projects is disbursed not in tax credits but in cash which is paid-out only if and to the extent certain tax revenue is actually generated at the completed project. The award amount can equal up to 30% of project costs and is paid to the developer over time (up to 20 years), drawing on up to 75% of the net new tax revenue generated by the project (the foregoing percentages are 40% and 85%, respectively, if the project is located in a GSGZ). Potential tax revenue streams to fund the ERGG award include sales taxes, utility taxes, hotel taxes, and business taxes.

There is no minimum amount of project cost for commercial ERGG eligibility; however, the developer must demonstrate that its project provides an overall net economic benefit to the State. Applications for commercial projects must be submitted to NJEDA by no later than July 1, 2019.