

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

TIME-SENSITIVE ELECTION: NEW JERSEY ALLOWS TAXPAYERS TO CONVERT BUSINESS EMPLOYMENT INCENTIVE PROGRAM GRANTS TO REFUNDABLE TAX CREDITS

SUMMARY

New Jersey Governor Chris Christie (R) recently signed into law S.B. 3232, 216th Leg., Reg. Sess. (N.J. 2015), which allows taxpayers to convert Business Employment Incentive Program (“BEIP”) grants to refundable tax credits. A taxpayer must make an election to convert the grant into a tax credit by **July 11, 2016**.

DETAILS

Background

Under the BEIP, New Jersey awarded qualifying businesses cash grants for hiring new employees in the state for a term of up to 10 years, with a maximum of \$50,000 per employee. Since the inception of the BEIP in 1996, the New Jersey Economic Development Authority (“EDA”) has approved 499 BEIP agreements, which has resulted in the creation of over 105,000 jobs and the disbursement of over \$1.5 billion. However, since 2013, the state halted any further cash grant disbursements because the BEIP has not been funded.

Conversion of Grant to Refundable Tax Credit

Pursuant to S.B. 3232, a taxpayer who makes an irrevocable election by **July 11, 2016**, may convert outstanding BEIP grants into tax credits. A taxpayer that decides not to make the election will receive a cash grant disbursement only if New Jersey decides to fund the BEIP in the future.

CONTACT:

ATLANTIC:

JONATHAN LISS, Tax Senior Director
215-636-5502 / jliiss@bdo.com

JEREMY MIGLIARA, Tax Senior Director
703-770-0596 / jmigliara@bdo.com

CENTRAL:

ANGELA ACOSTA, Tax Senior Director
248-688-3313 / aacosta@bdo.com

NICK BOEGEL, Tax Senior Director
414-615-6773 / nboegel@bdo.com

JOE CARR, Tax Principal
312-616-3946 / jcarr@bdo.com

MARIANO SORI, Tax Partner
312-616-4654 / msori@bdo.com

RICHARD SPENGLER, Tax Senior Director
616-776-3687 / rspengler@bdo.com

NORTHEAST:

JANET BERNIER, Tax Principal
212-515-5405 / jbernier@bdo.com

MATTHEW DYMENT, Tax Principal
617-239-4130 / mdyment@bdo.com

SOUTHEAST:

ASHLEY MORRIS, Tax Senior Director
919-278-1963 / amorris@bdo.com

SCOTT SMITH, Tax Senior Director
615-493-5629 / ssmith@bdo.com

SOUTHWEST:

TOM SMITH, Tax Partner
918-281-4080 / tasmith@bdo.com

GENE HEATLY, Tax Senior Director
214-665-0716 / gheatly@bdo.com

WEST:

ROCKY CUMMINGS, Tax Partner
415-490-3130 / rcummings@bdo.com

PAUL MCGOVERN, Tax Senior Director
714-913-2592 / pmcgovern@bdo.com

A taxpayer makes the election to convert BEIP grants to tax credits by filing an Amendment to Agreement for their corresponding tax type with the EDA. The Division of Taxation (the "Division") then issues an annual certificate for the unpaid BEIP grant amounts in one to five installments, depending on the year the grant accrued, according to a schedule provided in the law. For example, the Division will issue certificates for grants accrued during years 2008 through 2013 in five installments as follows: 30 percent in 2017 and 2018; 20 percent in 2019; and 10 percent in 2020 and 2021. Certificates for grants accrued during 2014 or 2015 will be issued in four equal installments over a four year period.

Application of Tax Credit

A Corporate Business Tax ("CBT") or Insurance Premiums Tax ("IPT") taxpayer claims a tax credit by attaching the annual certificate to its tax return for the year and entering the credit on the appropriate line of its return. The Division will treat any credit in excess of tax liability as an overpayment and apply it to outstanding liabilities of the taxpayer. The Division will issue a cash refund to a CBT taxpayer whose credit exceeds the amount of its outstanding tax liabilities, but not to an IPT taxpayer. Thus, an IPT taxpayer loses the benefit of any excess credit since New Jersey does not allow an IPT (or CBT) taxpayer to carryforward unused credits.

A taxpayer who is not subject to the CBT or IPT, such as a partnership or limited liability company treated as a flow-through entity for tax purposes, may apply to the EDA for a tax credit transfer certificate. A tax credit transfer certificate may then be sold to a CBT or IPT taxpayer for not less than 75 percent of the face value of the certificate starting in 2017, thereby monetizing the unusable tax credit. There is currently no mechanism in place for a taxpayer who is not subject to CBT or IPT to use the tax credit on its own or for its individual owners.

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- ▶ The option to convert the BEIP grant to tax credits provides a taxpayer with the opportunity to take advantage of its BEIP benefits without concern for the likelihood of a future cash grant disbursement. However, the taxpayer should carefully evaluate the consequences of converting the grant to a tax credit since the election to convert such is irrevocable.
- ▶ A taxpayer who is not subject to CBT or IPT should balance the conversion of the grant to a tax credit transfer certificate and the amount it may receive for the sale of the credit (which may create a taxable event for income tax purposes) against opting to forego the conversion and the likelihood of receiving a cash grant disbursement in future years.
- ▶ BDO can assist with the sale and transfer of BEIP tax credit transfer certificates through its membership in the Online Incentives Exchange (or OIX), an online marketplace for buying, selling, and processing transferrable state tax credits.

BDO's SALT Tax Credits and Incentives Practice has successfully assisted many clients in New Jersey and other states with tax credits and incentives opportunities, and can assist you. Should you have any questions or would like to discuss the BEIP grant conversion, please contact Tanya Erbe, National Credits and Incentives Leader at (310) 203-1259 or terbe@bdo.com or Janet Bernier, Tax Principal at (212) 515-5405 or jbernier@bdo.com.

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