



### **The Urban Transit Hub Tax Credit- Transit Oriented Development Comes to New Jersey...or Does it?**

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Over the past two decades, numerous metropolitan areas in the United States have embraced the concept of transit oriented development (“TOD”) in an attempt to manage and control the negative environmental and social impacts of urban sprawl. TOD programs are intended to increase pedestrian and transit trip taking while reducing the number and length of auto trips. In theory, TOD will help lower greenhouse gas emissions and make development more “livable,” which is an element that some believe is lacking from modern suburban development planning.

In January 2008, New Jersey jumped on the TOD bandwagon by enacting the Urban Transit Hub Tax Credit (the “UTHTC”). The UTHTC was implemented to spur capital investment, business development and employment opportunities by offering tax credits to businesses that relocate to transit hubs within nine designated municipalities. The designated municipalities are Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken.

The UTHTC program offers credits of up to 100% of a claimant’s qualified capital investment and taxpaying businesses may apply 10% of the total credit amount per year over a ten (10) year period against corporate business tax, insurance premiums tax, or gross income tax liability. To be eligible for the credit, there must be a minimum investment of \$75 million in a qualified business facility in an “urban transit hub” that will employ at least 250 full-time employees. Businesses may apply for the tax credits within five (5) years of the UTHTC’s January 13, 2008 effective date and satisfy the conditions for award of the credits within eight (8) years of that date. Additionally, tenants occupying space in qualified business facilities may also receive tax credits if the tenant occupies space that proportionately represents at least \$25 million of the capital investment in the facility and the tenant employs at least 250 full-time employees at the facility. However, the tax credits to both the owner and tenant will be reduced or forfeited if the facility’s employment levels are not maintained above the threshold.

The UTHTC represents progressive public tax policy, but has been criticized by businesses and developers for its stringent eligibility requirements. In fact, only one project, a Verizon Corporation development in Newark, has qualified for the UTHTC. However, the legislature appears to be responding to the pleas of the business community by considering an expansion to the UTHTC’s eligibility requirements.

On March 16, 2009, the New Jersey State Senate unanimously approved a bill (S-2379) co-sponsored by Senator Sandra Bolden Cunningham (D-Hudson) and Senator Teresa Ruiz (D – Essex), which expands the eligibility requirements of the UTHTC. Under the proposed legislation, the capital investment threshold would be lowered from \$75 million to \$50 million for both tenant and non-tenant businesses. The bill would also permit businesses to count workers employed by professional employment organizations as employees for the purposes of meeting the UTHTC’s employment threshold. The Cunningham-Ruiz bill would also allow a tenant’s leased area to represent \$17.5 million of the total capital investment for the tenant to be eligible for the credit. Under the current law, the leased area must represent at least \$25 million.

The Cunningham-Ruiz bill would also enable capital investments made by a tenant to be included in the calculation of the capital investment made by the owner, but only to the extent necessary to meet the owner’s minimum capital investment of \$50 million. In addition, the Cunningham-Ruiz bill would permit businesses to transfer the tax credits that it received from the UTHTC program. Tax credits could be transferred or sold in full or in part to any other person that may have tax liability.

The proposed legislation would also expand the definition of an urban transit hub. Under the current law, only properties located in one of the designated municipalities and within a half mile radius surrounding the mid point of the New Jersey Transit Corporation, Port Authority Transit Corporation, Port Authority, Trans-Hudson Corporation, rail station platform area are eligible for the UTHTC. Under the Cunningham-Ruiz bill, eligibility would be extended to properties within a half-mile radius of an underground light rail station and properties adjacent to or connected by rail spur to a freight line provided that the business utilizes that freight line for loading and unloading freight. Additionally, the proposed revisions would add Secaucus to the list of municipalities eligible for the tax credit.

The Assembly’s version of the Cunningham-Ruiz bill, was introduced on March 9, 2009 by Anthony Chiappone (D-Hudson). Considering the Senate’s unanimous vote, the Assembly should pass the bill without resistance, which is good news for developers. If enacted into law, the lower eligibility requirements might finally make the UTHTC the development and employment catalyst it was intended to be.

For more information on the Urban Transit Hub Tax Credit, or any other questions about this Real Estate/Transactional Law Update, please contact Todd D. Greene at 609.989.5023 or [tgreene@sternslaw.com](mailto:tgreene@sternslaw.com).