N.J. has a new tax break program for companies, but no one wants more office space these days

By Ted Sherman | NJ Advance Media for NJ.com

Last year, the Legislature approved a sweeping $14 billion corporate tax incentive plan to attract new jobs and business to New Jersey, revamping the state's troubled economic development program that was allowed to expire in the wake of disclosures of widespread abuses and lax oversight.

Since then, though, the state has yet to award any incentives and only a few companies have even filled out preliminary applications, according to the New Jersey Economic Development Authority — attributing that to the pandemic.

Indeed, a bill amending the new law was approved earlier this month by Gov. Phil Murphy just months after he signed the new law, sparked in part by changes brought to the workplace in the aftermath of COVID. That bill loosened eligibility requirements in the program allowing companies to count workers no matter where they are located even if they are working remotely out of state.

Tim Sullivan, chief executive officer of the NJEDA, said it was not surprising that the new incentive program has yet to take hold. He pointed out the rules that governing the program were only recently put into place. But more importantly, he noted there remains much uncertainty over the future of the workplace itself.

"There's a lot of opportunities, but the pandemic has had a chilling effect on their decisions," he said of corporate decision makers, noting that for too many firms, the virus left them thinking about little else but survival.

"Most companies for the better part of a year have been in a standstill mode," he said.

Relocation decisions generally are a big deal for companies as executives ponder where they want to be located, what that will cost, and how to accommodate their workforce. Now, said Sullivan, there are additional questions on the table: Do they need more space? Do they need less space? Will there be more remote work? Do people want to commute long distances?

"Everyone is thinking about this," Sullivan said. "Those questions are still up in the air."

The impact of tax credits may also be less of an incentive in a still uncertain environment. Tax attorney Jay Soled, a professor at Rutgers Business School and director of the university's Masters in Taxation Program, said tax incentives are really not big dollars when it comes to the whole picture for a company considering relocation or expansion.

"People have to keep in mind that taxes are just one component in what goes on it these decisions. And it's a small component," he said.

While many people are celebrating an end to the pandemic and consumers are making big purchases, those making big capital outlays are still looking back to the fact that their businesses were all but dead for a long time.

“You can incentivize people all you want, but they are scarred from the past 18 months,” Soled said, referring to the effects of pandemic on the economy.

Before COVID hit, the state’s existing economic incentive program — known as the Economic Opportunity Act of 2013 — had come under harsh criticism, and Murphy called for major reforms. A special governor’s task force found millions in tax credits intended to encourage companies to locate here too often went to companies whose jobs were never at risk, or went to those with ties to special interest groups and political insiders.

An 18-month investigation ultimately blamed widespread abuses on the willingness of companies to misrepresent their intentions to the state, the conduct of outside consultants who advised companies on how to game the system, and the failure of the NJEDA to properly vet applications.

Among those companies was Rainforest Distribution Corp., a natural-grocery distributor then based in Queens, which had claimed said it was considering two sites — Orangeburg, N.Y. and Bayonne — when it first sought NJEDA assistance in 2015. But in testimony before the task force, company officials disclosed that Orangeburg had not even been considered when the company prepared its application with the help of a major real estate broker. “We had no intention of moving to Orangeburg,” a company executive said. “We relied on experts to navigate the EDA’s complex process.”

Rainforest, which received an annual tax credit of $240,000 for calendar year 2017 on a $2.4 million ten-year award, has not received a subsequent tax credit since then, according to a NJEDA spokeswoman. Another company withdrew from the program before receiving any of the tax credits for which it was approved. A third, which received a $7.9 million award in 2017 and received tax credits in 2017, 2018, and 2019, is currently under review.

The NJEDA also sought additional documentation from more than 18 companies that received tax credits from the state and many of those are still under review, said Sullivan.

Separately, a dispute with the Philadelphia 76ers over an inflated $82 million tax break awarded the team when it moved its practice facilities to Camden in 2016 appears to have been resolved. Prior to the pandemic, Sullivan said the NJEDA began a discussion with the NBA team about an error in the agency’s calculation of the amount of its tax credit award at the time of its approval in 2014.

“The conversation, which is centered around the NJEDA’s interpretation of the statutory definition of eligible capital expenses, has resumed now that it appears the worst of the pandemic has passed,” he explained. “In the interim, the 76ers have been receiving their annual tax credit disbursements based on certified project numbers.”

That has cut the team’s award to $79.5 million, or $7.9 million a year for ten years.

The state’s new economic incentive program, which emerged after a long and contentious political fight between Murphy and legislative leaders, led to major changes. Among its programs included NJ Emerge, meant to incentivize employers to remain in the state and NJ Aspire, geared toward real estate and community development. Both offer tax credits capped at $1.1 billion a year for six years.

The legislation, which was signed just three weeks after it was first introduced and passed through the Statehouse with lightning speed, provided $2.5 billion toward "transformative projects" including large-scale affordable housing, appropriated $50 million to historic preservation and $40 million toward eradicating "food deserts" in places with few supermarkets. In addition, it earmarked $2.6 billion for film tax credits. And it created an inspector general position within the NJEDA to act as a watchdog. The cleanup bill, A5939, which the governor signed just over a week ago, made some technical changes as well as enhanced flexibility driven by the pandemic.

Progressive groups and others who supported a major overhaul of the program, however, were outraged by the speed of its approval and what they saw as giveaways to big business.

Despite the slow pace of the program, Sullivan believes New Jersey remains in the game. He said there are companies coming to New Jersey without the lure of incentives, pointing to the decision recently by WebMD to move its headquarters from New York to the Gateway complex in Newark, and a move by sports betting sites to add people here.

"It's really early," he said of the incentive program. "We have gotten folks who have been talking to us. Companies are in a war for talent. So that plays in our favor."

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