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The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Innovation Evergreen Act

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Greenbaum, Rowe, Smith & Davis LLP Client Alert

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The New Jersey Economic Recovery Act of 2020, a seven-year, \$14 billion package of incentive programs intended to encourage New Jersey job growth, property development and redevelopment, community partnerships, and numerous other economic development initiatives, was signed into law by Governor Phil Murphy on January 7, 2021.

This Client Alert focuses on the New Jersey Innovation Evergreen Act, enacted under the new legislation to allow qualified venture firms to purchase tax credits to be used for investment in innovation programs designed to advance the competitiveness of the state.

The New Jersey Innovation Evergreen Act has been widely recognized as a groundbreaking and potentially self-sustaining (or “evergreen”) initiative to attract venture capital investments in New Jersey-based emerging growth companies and promising startups within a public-private investment scenario that allows both private investors and the state to earn direct financial returns on their capital investments.

How the Process Will Work

The New Jersey Innovation Evergreen Act authorizes the New Jersey Economic Development Authority (EDA) to auction up to \$300 million in tax credits. The auction proceeds will be deposited into the newly established New Jersey Innovation Evergreen Fund and awarded to qualified venture firms making matching investments in qualified businesses.

Qualified businesses are defined under the Act as: (a) businesses having their principal place of operation in New Jersey; (b) businesses intending to continue to operate principally in New Jersey after receipt of any investment under the Act; (c) businesses engaged in a targeted industry (including advanced transportation and logistics, aviation, clean energy,

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Published Articles (Cont.)

life sciences, professional services and film and digital media, among others); and (d) businesses employing fewer than 250 people at the time of the investment.

Qualified investments under the Act consist of investments by the New Jersey Innovation Evergreen Fund in qualified businesses for the purpose of purchasing shares of stock in those businesses, with an option to make additional investments. Any investment made by the New Jersey Innovation Evergreen Fund will be accompanied by a matching investment contribution from a qualified venture firm.

Qualified Venture Firm Certification

Qualified venture firms will be certified by the EDA pursuant to specific criteria guided by the terms of the Act. The standards for evaluating applications for certification will include: (a) the applicant's management structure; (b) the applicant's investment strategy; (c) the location of the applicant's venture firm; and (d) the proposed structure of the applicant's investments in qualified businesses, with preference given to venture firms that are located in incentive areas and to those that agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas.

Venture firm applicants lacking equity capitalization, net assets, or written commitments of at least \$10 million in the form of cash or cash equivalents, or which employ fewer than two individuals to direct the qualified investment of capital with at least five years of money management experience in the venture capital or private equity sectors, may not be certified by the EDA. Additionally, applicants must be held in good standing by the New Jersey Department of Labor and Workforce Development.

The EDA will be promulgating rules related to the implementation of the New Jersey Evergreen Innovation Act. We will keep you updated on this and other developments related to programs enacted under the New Jersey Economic Recovery Act of 2020. Please contact the author of this Alert, **Lauren M. Ahern** lahern@greenbaumlaw.com | 732.476.2398 with questions or to discuss your specific business circumstances. Ms. Ahern is a member of the firm's **Financial Incentives & Economic Development Practice Group**.

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February 25, 2021

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February 23, 2021

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