



RUTGERS CLiME

Center on Law, Inequality and Metropolitan Equity



INVESTING IN THE EQUITABLE STATE

**How New Jersey's Tax
Incentive Programs Fail
to Bring Equitable Growth**

A Report and Matrix

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Executive Summary

This report and accompanying matrix are a critical evaluation of New Jersey's tax incentives programs through the policy lens of equitable growth. Persistent inequality between New Jersey's communities and households hurts *all* of New Jersey. We assumed that the expenditure of taxpayer dollars for private economic gain should further a public interest in making weaker markets stronger—i.e., equitable growth. We identified every state tax incentive that contained some aspect of economic fairness and analyzed each for how well it contributed to producing equitable growth. As the matrix at the end of the report shows, we found few gains and many lost opportunities.

If economic development broadly represents New Jersey's interests in promoting economic welfare, then *equitable* economic development refocuses state policy on the state's interest in improving economic welfare in the places where market need is greatest. Since many of these needs converge in communities of the state that have struggled with disinvestment and undernourished markets for many years, we believe a critical public purpose is served when the state steps in to revitalize markets where no one else will. This represents a policy of *equitable* economic development, an expansion of growth and opportunity.

For purposes of this analysis, **equitable economic development means publicly incentivized growth that remediates gaps in economic mobility for households and communities because of location, market exclusion, sectors in need of support, or historic discrimination and structural bias.**

The estimated foregone NJ State tax revenues for Fiscal Year 2021 from 24 economic development incentives that were in place prior to December 2020 is \$1.42 billion— more than one-third of the \$4 billion borrowed by the State to close its FY 2021 budget gap. Current state business tax incentives have offered only limited public benefit in New Jersey and negligible attention to economic equity.

We examined 24 of the State's tax incentive programs that were related to economic development under the Corporation Business Tax (CBT) and the Sales/Use Tax prior to the enactment of the 2020 Economic Recovery Act. We found surprisingly few actually move



toward closing gaps in economic mobility based on employment, geography or race. Even when we apply a less exacting standard of equity, limited to a) locating businesses in distressed communities or b) creating jobs for marginalized/under-represented residents, the results show that New Jersey's primary policy tools for equitable development are poorly funded, often unused, vaguely targeted, rarely evaluated and unaccountable. Specifically:

- We found that most CBT incentives that are actually used have nothing to do with equity and serve some other market purpose. Those incentives that are explicitly designed to advance equity go unused or cannot be identified. This suggests a problem of policy design, execution and commitment. Another three of the 18 CBT incentives have equity components, but there are no available data available indicating whether they have been used or what the foregone tax revenue is associated with them, compounding the problem of policy design, execution and commitment.
- We found that two of the four Sales/Use Tax incentives (in outdated Urban Enterprise Zones) produced substantial foregone revenue—\$314.2 million. These incentives were associated with business purchases (100 percent exemption on purchases of tangible property and services) and the reduction of the State Sales/Use Tax on eligible consumer purchases at businesses in UEZs. But mere location of generalized credits in one of these municipalities does not constitute effective targeting of public resources for undernourished markets making continued reliance on UEZs unjustified in the face of other alternatives.

Compliance is lacking along with the public information required by law. Information concerning tax incentives is only available to the public in New Jersey's *Tax Expenditure Report* (TER). Applicable law requires release of 7 (seven) types of information. For over a decade, the Department of the Treasury has not provided at least three of those and often omits a fourth. These systemic compliance failures are problems for government transparency and efficiency—but also for economic equity.

Overall, CLiME's analysis of New Jersey's economic development business incentives demonstrates a lack of economic equity in the spending of billions of taxpayer dollars for purported public benefit or purpose. New Jersey can do better. Economic equity entails



using public dollars to close mobility gaps that have long produced inequality in the state based on race, location and class status. It begins with the policy imperative of seeing equitable growth at the heart of public purpose, then demanding a clear nexus between investment and return through a transparent process with accountability built into it.

Summary of Recommendations:

Change is possible, using the “multidimensional view of economic life”. From our analysis, we recommend several steps that New Jersey should take to make equitable economic development a central public purpose of its business tax incentives policies.

- 1) Create an equitable system of business incentives by adopting performance rubrics.** Empanel an expert state task force to develop a set of economic equity indicators that become the basis for a scorecard or rubric by which tax incentive programs are evaluated. Fortunately, the Economic Recovery Act already incorporates a net benefit analysis in its provisions.¹ The rubric that we recommend here includes additional indicators of equitable growth.

We recommend that equity indicators incorporate the following subject areas:

- **Job Creation Baselines** – measuring objective markers of employment mobility (e.g., living wage thresholds; availability of childcare; transportation access; opportunities for mobility; quality and availability of health and retirement benefits; sector preferences based on growth potential and employment expansion)
- **Location Targets** (e.g., reward local tax base growth for distressed areas; bonuses for census tracts with median household incomes below 60% of the regional/area median; bonuses for numerical jobs goals employing certain percentages of unemployed and underemployed persons; improvements to tax base)

¹ See methodology incorporating IMPLAN at <https://www.njeda.com/wp-content/uploads/2021/05/Appx-B-Net-Benefit-Analysis.pdf>.



- **Access to Capital Goals** (e.g., Create new pathways to capital; Disincentivize institutional bias; Reward differences in investor backgrounds; Create new pathways to business and supply chain networks)
- **Median Income Growth Baselines** - measuring the growth in local incomes attributable to the effects of the incentive on locally employed people whose baseline incomes were a certain percentage below the immediate area median before incentives went into effect or expanded.
- **Housing Stability Baselines** - measuring rates of evictions and foreclosures of area residents from program baseline to each subsequent reporting period.
- **School Absenteeism Baselines** - measuring educational stability of area students by comparing baseline absenteeism rates before the incentives and after they take effect.

2) Amend the Economic Development Authority (EDA) enabling Statute. Following the ERA model, the legislature should amend language in the EDA enabling legislation, N.J.S.A. secs. 34:1B-1 *et seq.*, to emphasize equitable economic development principles and to define relevant investment objectives for *all* programs under its plenary authority. Economic equity should be the law of the state. The law should define “public benefit” and “public purpose” to more explicitly condition the expenditure of public dollars on business incentives of *any* type on measurable equitable returns on investment. By “equitable”, state EDA should explicitly adopt the principle of overcoming market deficiencies, especially in areas of the state, business sectors, businesses and consumers that are demonstrably disadvantaged. The Authority should develop and use equity indicators like those recommended immediately above in the development of the statute’s implementing regulations. Regulations should require regular program eligibility reviews, sunset provisions, claw back provisions and annual public disclosure.

3) Target employment deficits. The State should amend qualifying criteria for tax incentive programs with job creation/retention requirements to stipulate that a specific proportion of the jobs created/retained must go to individuals from under-represented/marginalized groups and establish monitoring mechanism to ensure that these targets are met. Many of New Jersey's tax incentives include job



creation/retention in their eligibility criteria. For example, in the Grow NJ Assistance Program and in Emerge, its replacement program established in the 2020 ERA, businesses receiving the incentive are required to create or retain a specified number of fulltime positions. With few exceptions, there is no language in credit eligibility requirements that says anything about for whom these jobs should be created. Further, these requirements are limited to only some of corporate tax incentives when most can be characterized by common market deficits regarding employment of disadvantaged workers from disadvantaged communities.

- 4) Require periodic evaluations for compliance and effectiveness.** The State should, either through the Office of the Comptroller or by independent entities, conduct periodic evaluations of tax incentives that are written into the tax code and stay in effect until they are specifically discontinued by the Legislature and Governor. For the most part, the State does not audit business tax incentives and very little data are publicly available to assess the efficacy of the incentives. Direct expenditures, by contrast, last only as long as the budget cycle, unless otherwise stipulated in authorizing legislation or appropriation bills. Many states are now conducting evaluations to determine whether tax incentives are achieving their stated purpose. (We applaud the creation of an Office of the Inspector General within the NJEDA as well as the appointment of a Chief Compliance Officer.)
- 5) Enforce the TER Requirements.** The State should enforce requirements in NJ PL 2009, Chapter 189 for the annual Tax Expenditure Report. The TER does not include information for several of the requirements stipulated in the law including their impact on the fairness and equity of the distribution of the tax burden. Furthermore, there are incentives for which the TER provides no information. If all information required by State law were to be included in the TER, as well as information on refundability and transferability of tax credits, the document would be a valuable source to assess whether individual tax incentives are working, and, importantly for equitable economic development, who is benefiting from the incentives.
- 6) Restrict Transferability and Refundability.** The State task force should study the elimination of transferrable and refundable credits. The primary question to be



addressed is whether it makes sense for tax breaks to be sold to companies the state never set out to help.

- 7) Transparency.** The State should insist on a policy of absolute transparency in providing the public with easily accessible information about tax expenditures of public funds, whether or not a statutory duty exists. This norm of transparency extends to easily accessible notification protocols for the availability of business tax incentives in order to promote broader participation.
- 8) Consistency.** The State should ensure that all its websites that discuss tax incentives are providing the same information for individual incentives. For some incentives, there are differences in the information provided on State websites, even with regard to the names of the incentives.



Part 1: The Problem of Public Purpose without Equity

When New Jersey, like most states, decides to spend billions of taxpayer dollars on business tax incentives, it exercises its virtually plenary authority over taxation under Article VIII of the state constitution. Almost nothing constrains this power. Not taxpayers. Not local governments. Not even competitors of businesses who lose out to (usually bigger) rivals. Other states amended their constitutions to include the public purpose doctrine under which state governments may only expend funds to private companies if it serves public ends.² New Jersey did not. Instead scrutiny of business tax expenditures in the name of economic development has focused less on *what* economic activity states choose to help than on *how* expenditures are apportioned.³ This is understandable. Poorly designed tax incentives that return little on public investment yet go largely unmonitored risk becoming gratuitous wealth transfers from the public to private interests or, worse, infected with corruption. The effect is inefficiency and wasted opportunities to promote economic growth, supported by powerful interests with no end in sight.

This report focuses on a companion problem of unchecked tax incentive policy: increased economic inequality and wasted opportunities to promote equitable growth. Although New Jersey has attempted to address aspects of the inefficiency problem through its recent

² See Brian Libgober, *The Death of Public Purpose (and How to Prevent It)* (Harvard Univ. John M. Olin Ctr. for Law, Econ. & Bus., Discussion Paper No. 63, 2016), http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/Libgober_63.pdf [<https://perma.cc/T7PS-BUMN>]. Most commentators who have examined case law on the public purpose doctrine argue that courts no longer enforce it. See, e.g., Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, [34 RUTGERS L.J. 907, 945 \(2003\)](#) (“[T]he public purpose requirement as a constraint on legislative action is a dead letter today.”).

³ See Nancy Solomon, “The Real Bosses of new Jersey: New Jersey Puts \$578 Million in Controversial Tax Breaks on Hold After Investigation,” *PRO PUBLICA*, (July 13, 2020) available at <https://www.propublica.org/article/new-jersey-puts-578-million-in-controversial-tax-breaks-on-hold-after-investigation>.



adoption of the Economic Recovery Act of 2020, it continues to trail in efforts to use economic development policy to actually grow economic development equitably—a particular shortcoming during an historic moment of reckoning over systemic racism. *What* economic development New Jersey incentivizes with public dollars lacks much equitable consideration of economic needs, especially in areas with undernourished markets and struggling residents.

Tax incentives are fundamentally the public funding of preferential economic treatment through the state tax code, giving taxpayer dollars—through foregone tax revenues—to private businesses usually to create or retain jobs that would not otherwise occur or to grow industry sectors that state government has decided it wants to encourage. Incentives generally take the form of tax exemptions, deductions or credits. They give the business recipient an advantage over competitors that they could not get without public help—i.e., preferential tax treatment. This commonly practiced yet extraordinary departure from free market principles is justified by the legislature’s determination that the public’s return on investment is greater than what it gives up. The public forgoes property, business and sales tax revenues in return for projected property, sales and income tax gains associated with more employers and more jobs. Since what the public pays occurs through the tax code, rather than through direct spending, these “tax expenditures”—and they *are* expenditures—don’t show up in the State budget or compel legislative debate or invite public scrutiny. In fact, as we show for New Jersey, one of the hallmarks of business tax incentive programs is their almost total lack of transparency. Details are available only in the annual Tax Expenditure Report (TER) where, as we show later, information that is required by statute is chronically incomplete or missing altogether.

The fact that we don’t know whether billions in tax expenditures provide the public with a justifiable rate of return is a serious problem for fairness in government tax policy. A growing literature evaluating the effectiveness of corporate tax incentives to spur growth finds that they simply do not bring the promised job growth and where they do, gains are offset by



other losses the incentives create.⁴ The Brookings Institute called them “all cost and no benefit.”⁵New Jersey Governor Phil Murphy’s administration was so concerned with this outcome of state tax incentive policy that it convened a task force to investigate its implementation by the Economic Development Authority (EDA).⁶Analyses of New Jersey’s bloated incentives under the Economic Opportunity Act of 2013 by organizations like New Jersey Policy Perspective found glaring waste. Awards and subsidies of this size are woefully out of sync with economic development strategies in other states. “Whereas the average per job cost of corporate tax incentives hovers around \$33,000 nationwide, New Jersey’s unrestricted spending spree on subsidies led to a record breaking \$105,192 per job price tag in 2015. Today, the cost still exceeds \$80,000 per job.”⁷Many of Murphy’s task force’s conclusions informed a re-written Economic Development Act in 2020.⁸

⁴ See, e.g., Michael H. LaFave, Taking Back the Giveaways: Minnesota's Corporate Welfare Legislation and the Search for Accountability, 80 Minn. L. Rev. 1579 (1996)(an early analysis criticizing the proliferation of such incentives); Greg LeRoy, et. al, “No More Candy Store: States and Cities Making Job Subsidies Accountable, GOOD JOBS FIRST (1997), available at <https://www.goodjobsfirst.org/sites/default/files/docs/pdf/nmcs.pdf>. BRANDON BROCKMYER ET AL., PEW CTR. ON THE STATES, EVIDENCE COUNTS: EVALUATING STATE TAX INCENTIVES FOR JOBS AND GROWTH 1 (2012) Cf. Tracy A. Kaye, The Gentle Art of Corporate Seduction: Tax Incentives in the United States and the European Union, 57 U. Kan. L. Rev. 93 (2008).

⁵Timothy J. Bartik and John C. Austin, “Most business incentives don’t work. Here’s how to fix them.” Brookings, November 4, 2019, available at <https://www.brookings.edu/blog/the-avenue/2019/11/01/most-business-incentives-dont-work-heres-how-to-fix-them/>. See also Bartik, *Making Sense of Incentives: Taming Business Incentives to Promote Prosperity*, W.E. Upjohn Center for Employment Research (2019), available at https://research.upjohn.org/cgi/viewcontent.cgi?article=1277&context=up_press.

⁶New Jersey Task Force on EDA Tax Incentives 3rd Report (July 9, 2020) at <https://drive.google.com/drive/u/1/folders/1QMk6M15K0wlylDfRjWChsDgKdQAZBz9>.

⁷Sheila Reynertson, “Reining in Corporate Tax Subsidies: A Better Economic Development Playbook for New Jersey,” New Jersey Policy Perspective, (September 2019), at <https://www.njpp.org/wp-content/uploads/2019/11/NJPP-Report-Reining-in-Corporate-Tax-Subsidies.pdf>.

⁸ New Jersey Task Force on EDA Tax Incentives 3rd Report (July 9, 2020) at <https://drive.google.com/drive/u/1/folders/1QMk6M15K0wlylDfRjWChsDgKdQAZBz9>.



Equitable Economic Development: Place, Race and Market Disinvestment

Yet missing from scrutiny is the state's failure to use these same incentive programs to address economic needs to create and retain jobs and attract industrial sectors that the state should want in the name of equity. If economic development broadly represents the state's interests in economic welfare, *equitable* economic development refocuses state policy on the state's interest in economic welfare in its areas of greatest market need. This focus reflects policymaking in the public interest. It addresses significant unmet economic needs whose fulfillment could benefit the broadest possible swath of residents because of improvements to household incomes, employment mobility and the local tax bases. Since many of these needs occur in communities of the state that have struggled with disinvestment for years, we believe a critical public purpose is served when the state steps in to revitalize markets in these areas because no one else will. This is a policy of *equitable* economic development, an expansion of growth and opportunity.

In this report, **equitable economic development means publicly incentivized growth that remediates gaps in economic mobility for households and communities because of location, market exclusion, sectors in need of support, or historic discrimination and structural bias.** A focus on economic gaps recognizes the stubborn disparity in income and wealth among residents of New Jersey, who are often distinguished by race, ethnicity and geography. A focus on location and market exclusion acknowledges how economic inequality reflects decades of historic racial discrimination in housing, employment and other institutional practices that have conditioned the terms of mobility based on where people live. Our definition is also rooted in several well-documented areas of economic need.

As recent research shows, economic equity and racial equity are closely connected. Poverty, housing instability and unemployment have disproportionately afflicted the state's Black population for decades,⁹ making the economic marginalization of Blacks an apt starting

⁹ See, e.g., New Jersey Institute for Social Justice, "Bridging the Two Americas: Employment & Economic Opportunity in Newark and Beyond" <https://drive.google.com/drive/u/1/folders/1QMk6M15K0vwyIDfRjWChsDgKdQAzBz9>



point for the marginalization of all groups. The Covid-19 pandemic has tragically exacerbated existing disparities. Economic insecurity by race, however, is increasingly defined by place—the neighborhoods and municipalities in which one lives—and extends well beyond the poor. These race- and place-based economic inequalities are seen in access to jobs, promotion, business capital, mortgage lending, availability of consumer goods and services, healthcare and food. Disparities in the Garden State reflect the same gaps found across the country.

A systemic analysis by the McKinsey Global Institute recommends starting from “a multidimensional view of economic life, examining how individuals make a living, spend their incomes, and build wealth or manage debt.”¹⁰ When we do, several common patterns emerge:

- Black workers are overrepresented in lower-paying jobs in weaker industries, underrepresented in higher-paying sectors and in both receive lower wages than their white co-workers;
- Black workers don’t reside in areas near more gainful employment opportunities;
- Black workers work in sectors disproportionately at risk of displacement from automation;
- Black-owned businesses struggle for capital, take on more personal debt, avoid capital-intensive industries and lack access to business and supplier networks that allow them to scale upwards;
- Few incentive programs exist to help Black workers become entrepreneurs in the fields they know best, and talent pipelines are sparse;
- Black consumers are disproportionately hampered by a lack of satisfactory choices, especially in food, where 20 percent of Blacks live in “food deserts.”

(chronicling the state of underemployment of Newark residents in their own city and related trends in economic non-participation).

¹⁰McKinsey & Co./ McKinsey Institute for Black Economic Mobility and the McKinsey Global Institute, “The Economic State of Black America: What is and what could be,” 1 (June 2021).



McKinsey's analysis points to a variety of economic gaps whose closure would benefit not only Black workers, their families and local communities but the state and the entire nation. As a recent Citigroup analysis of the costs of inequality documents, the failure to close these gaps has meant enormous economic losses for the country. Citi's exhaustive study of gaps estimates the financial gains that would have accrued if gaps had been closed just 20 years ago.¹¹ The researchers found that just closing the wage gap between Black and white workers two decades earlier might have created an additional \$2.7 *trillion* in income that would be available for investment and consumption. Regarding the availability of business capital, the authors wrote, "Closing the share of Black-owned firms-gap 20 years ago might have generated \$13 trillion of revenues for investment, 6.1 million jobs per year, and a cumulative \$182 billion in income for consumption."¹² This focus on the economic plight of Black businesses, households and consumers helps to reveal economic development problems characteristic of many struggling people and communities across the state. Because these economic gaps affect so many New Jerseyans, closing them should be an important goal of a more equitable economic development policy and the incentives targeted to carry it out.

Main Themes in the Incentives Debate:

The "Counterfactual" vs. Public ROI

Presently, all 50 states and many local governments offer at least one tax incentive to businesses; some offer several, frequently to attract businesses from other states. The cumulative cost of the incentives to governments across the US has been estimated at upwards of \$50 billion a year.¹³ The provision of state tax incentives to encourage economic development can be traced as far back as the late 18th and early 19th century when businesses were given preferential tax treatment to adjust to the shift from an agriculture-

¹¹Citi GPS, "Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S." (Sept. 2020)

¹² *Id.*, at 4.

¹³ Bartik Timothy J. 2019. *Making Sense of Incentives: Taming Business Incentives to Promote Prosperity*. W.E. Upjohn Institute for Employment Research.



based economy to one driven by commerce and industry.¹⁴ Since the late 1930s, incentives have been used as part of a bidding war among states that feel compelled to match what other states are offering or risk being left out of the fight.¹⁵ Proponents argue that the incentives are necessary to attract/retain businesses, and that the tax revenue foregone from the incentives is partially, or totally, offset by the additional revenues derived from the increased economic activity generated by the businesses receiving them. They generally argue a counterfactual about the effect of incentives on business behavior, that but-for the receipt of incentives businesses would not make the same investments in the state. Although the counterfactual informs both legislative decision-making and academic research, there is little evidence to support or refute it.

Opponents, on the other hand, argue that tax incentives are an inefficient expenditure of scarce government resources on business expansion and location decisions that often would have occurred absent the incentives. Because all states with the exception of Vermont require a balanced budget, tax incentives impact the ability of states to balance their budgets by reducing revenues. The cost of tax incentives then reduces funding available for other budget priorities. Given the opportunity costs relative to other public interests, tax incentives should demonstrably pay for themselves through a documented return on the investment (ROI) by the public that is greater than the cost of direct spending by the legislature. Typically, there is no evidence that they do, or even a requirement that they try. Further, because business tax incentives often favor larger firms over others, they often represent a racial wealth transfer from the public to the predominantly white male stakeholders in the businesses that receive them.

If the two sides of the tax incentive debate could be reconciled by a review of empirical facts about their effects, they would be. But they can't because political and financial interests of actors we discuss later preclude an accurate answer. The truth is, we don't know the truth,

¹⁴ Public Health Law Center, STATE UNIFORMITY DOCTRINES AND SUGARY DRINK TAXES, 2017
<https://www.publichealthlawcenter.org/sites/default/files/resources/State-Uniformity-Sugary-Drink-Taxes-2017.pdf>

¹⁵ See for example, Rubin, Marilyn and Don Boyd (2013) for a review of the literature on tax incentives.



thanks to a systemic lack of transparency and the operation of several rules known mostly to accountants.

Another dimension to the debate is the conflict between tax principles and tax incentives. Six widely accepted principles against which to judge tax policies are **economic neutrality, adequacy, simplicity, transparency, competitiveness and equity**. An economically neutral tax does not influence economic behavior – individuals and businesses make decisions based on economic merit rather than tax implications. An adequate tax system raises enough revenue to support desired government services and investments. A simple and transparent system is easy to understand, relatively inexpensive for taxpayers to comply with, and relatively inexpensive for the government to administer. A competitive tax system does not impede the ability of companies to compete with those located outside the area and does not limit the ability to attract new business. An equitable system does not favor one group of taxpayers over another.

Almost by definition, business tax incentives violate these principles. Their explicit goal is to alter business decisions, encouraging more of a particular activity in a given area than private markets would undertake absent the incentives. Depending on the activity, this may be appropriate, but it places great responsibility on public officials to understand how the market is “wrong” and how the tax system can fix it. By lowering taxes for some taxpayers while keeping them higher for others, incentives may treat similarly situated taxpayers differently and can make it harder to raise adequate revenue with minimum public resistance. Myriad eligibility rules and credit calculations violate the simplicity principle for taxpayers and tax collectors. Finally, and perhaps most important for this report, is the principle of equity. By lowering taxes for some taxpayers while keeping them higher for others, incentives treat similarly situated taxpayers differently and are thus not equitable. In industries producing similar products, they favor one set of companies over another. For example, an incentive for solar energy panels could be perceived as inequitable by producers of wind turbines.

The violation of basic tax principles shows how extraordinary business tax incentives are, but also compounds the need for them to do more of the work of economic equity. Departures from conventional tax policy principles should require more, not less, justification.



New Jersey Can Do Better

As we discuss in comprehensive detail in Part 2 (and display in the Matrix in Part 4), current state business tax incentives have offered only limited public benefit in New Jersey and negligible attention to economic equity. We examined 24 of the State's tax incentive programs that were related to economic development under the Corporation Business Tax (CBT) and the Sales/Use Tax prior to the enactment of the 2020 Economic Recovery Act. We found surprisingly few actually move toward closing gaps in economic mobility based on employment, geography or race. Based on our analysis of the 24 incentives, Part 3 sets out our conclusions and recommendations.



Part 2: A Critical Analysis of Business Incentives in New Jersey

The estimated foregone NJ State tax revenues for Fiscal Year 2021 from 24 economic development incentives that were in place prior to December 2020 is \$1.42 billion— more than one-third of the \$4 billion borrowed by the State to close its FY 2021 budget gap.¹⁶ We conducted a comprehensive review of the 24 incentives to determine which among them devoted public resources to economic development activity consistent with our definition of economic equity enunciated in Part 1 of this report. None of them does. Instead, we asked only whether two, more general objectives of equitable economic development were incentivized—specifically, 1) geographical preference for job creation in areas of higher unemployment (“locational job creation”) and/or 2) employment of opportunities for residents with pronounced labor force participation problems (“labor force participation”). Note, this is a scaled down version of equity that does not reach the more comprehensive economic needs outlined by McKinsey or Citigroup in Part 1. There is also no explicit recognition of the economic harm racism has done to New Jersey employees, businesses or communities. Nevertheless, we wanted to establish a baseline from which to make future improvements in the State’s commitment to economic equity.

New Jersey uses business tax incentives to achieve several economic development objectives including shoring up the viability of selected industries such as the film industry (e.g., the Garden State Film and Digital Media Jobs Tax Credit), and spreading economic activity across the state (e.g., the Salem County Energy Sales Tax Exemption). Tax incentives, also referred to as "tax expenditures" to denote that they are spending through the tax code rather than through direct government spending, are defined in NJ's tax code, as:

¹⁶ J. Reitmeyer, NJ’s big borrowing deal comes under fire,” *New Jersey Spotlight* News.<https://www.njspotlight.com/2021/04/nj-budget-borrowing-debt-surplus-murphy-treasure-legislature/> (April 7, 2021).



"...revenue losses attributable to provisions of ...tax law which establish special tax treatment, including but not limited to tax law definition, deduction, exclusion, exemption, deferral, credit, preferential tax rate or other special tax provision resulting in a reduced tax liability for certain persons, individuals, types of income, transactions or property from the liability which would be presumed to exist without the State tax expenditure."¹⁷

The special treatment referred to in the tax code is provided to individuals and/or businesses under all the State's major taxes. Incentives that apply to businesses are primarily offered under the Corporation Business Tax (CBT) and the Sales/Use Tax. New Jersey would appear to hold equitable economic development as an objective, with 11 of its 24 CBT and Sales/Use Tax economic development incentives in place prior to December 2020 either ostensibly targeted at businesses/residents in distressed communities or with components encompassing these objectives. A closer examination of foregone revenues associated with the mechanics of CBT and Sales/Use Tax incentives reveals a different story.

Few, if any, incentivize growth meant to remediate gaps in economic mobility for households and communities because of location, market exclusion, sectors in need of support or historic discrimination and structural bias—our recommended definition of equitable growth. Yet even when we apply a less exacting standard of equity, limited to a) locating businesses in distressed communities or b) creating jobs for marginalized/under-represented residents, the results show that New Jersey's primary policy tools for equitable development are poorly funded, often unused, vaguely targeted, rarely evaluated and unaccountable. Before presenting our findings on New Jersey's incentives, we first explain how they're used.

1. Incentives under the Corporation Business Tax (CBT)

Tax incentives provided under the CBT reduce tax payments for businesses subject to the tax in various ways. *Deductions and exemptions* reduce taxable income. This means that when businesses calculate how much they owe in taxes, they subtract the value of exemptions and

¹⁷NJ Tax Expenditure Report 2010, 3.



deductions from their net earnings to get to "taxable income." Taxpayers then apply the tax rate to this base to figure out how much they owe. In NJ, where the CBT rate as of the end of 2020 was 9.0%,¹⁸ a \$1,000 exemption or deduction reduces taxable income by \$1,000. Its value to the taxpayer is thus \$90 ($\$1,000 \times .090$). *Credits* are subtracted directly from taxes owed and reduce taxes on a dollar-for-dollar basis. All 18 incentives provided under the CBT are in the form of tax credits. However, the full benefit to tax credit recipients and the potential costs to taxpayers goes beyond the actual monetary value of the credits due to provisions in the tax code, specifically carry forwards, refundability and transferability. Each of these provisions that compounds the value of the credit by extending time, exchanging ownership interests or flexible abandonment offers little benefit and significant risk to the state and to taxpayers.

Carry forward provisions allow recipients of the credit to use the unused portions for up to 20 future tax years, if they do not need them to reduce their corporate tax liabilities in the year the award was made. Thus, decisions made by the State in one year can impact revenue collections and the State budget in future years due to the timing and magnitude of tax breaks. **Thirteen of New Jersey's 18 CBT credits in the Tax Incentive Matrix have carry-forward provisions.**

Refundable tax credits mean that if the dollar value of the credit is greater than what a business owes in corporate business taxes in the year in which the credit is received, the State will refund the remaining balance to the business. Refundable tax credits thus constitute state spending that requires direct monetary outlays but is not subject to budget scrutiny as is direct spending, making them totally non-transparent. **Of New Jersey's 18 CBT credits in the Tax Incentive Matrix, four are refundable.**

Transferable tax credits enable the original qualifying recipient of the credit to sell to any NJ CBT or Insurance Tax payer—even an unqualified entity under the terms of the credit—any or

¹⁸The rate is 7.5% for all corporations with net income of \$100,000 or less. The rate is 6.5% for all corporations with net income of \$50,000 or less.



all of the unused portion of the credit. The transferee (buyer) pays a discounted price (e.g., \$0.90/\$1 of credit value) for the purchased credits and is thus able to pay its taxes at a reduced cost despite having no involvement in the economic activity for which the tax credit was initially awarded.

For example, if a film production company does not need the film tax credits it has received to reduce its own tax liability, it can sell the unused portion to an insurance company that can use them to reduce its NJ Insurance Tax liabilities. The buyer is not required to engage in film production. There is no publicly available information on the costs to NJ associated with the transferred credits. This lack of cost information is also true for other states permitting the transfer of credits. According to Goodman:

No one knows for sure how much transferable tax credits cost states, but it seems clear that the total is billions of dollars a year. On its own, for example, Missouri's Historic Preservation Tax Credit ... has cost the state \$500 million over the last four years. Louisiana paid out more than \$200 million in transferable film tax credits in fiscal year 2012.¹⁹

A national industry has evolved around transferring tax credits. They are offered for sale through online exchange websites, independent brokers that bring interested parties together, or through business-to-business relationships. In NJ, prior to the passage of the 2020 Economic Recovery Act, there was no limit placed on how many times tax credits could be turned over. The Act limits credit transfers to one sale for some programs; for others, multiple turnovers are still permitted. The Recovery Act also requires that for each tax credit transfer certificate that the EDA approves, it must post the name of the transferor, the name of the transferee, the value of the tax credit transfer, and the State tax against which the transferee may apply the tax on its website.

¹⁹ Goodman, J. (2012 December 14). *Tax breaks for sale: Transferable tax credits explained*. PEW. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/12/14/tax-breaks-for-sale-transferable-tax-credits-explained>.



There is no requirement that the business location of transferees be provided nor that information regarding who they hire be reported. The impact of credit transfers on equitable economic development is thus totally opaque. Moreover, since transferees are not required to meet the qualifying activity that generated the original credit eligibility, the State is subsidizing businesses that it never set out to help.

Seven of New Jersey's 18 CBT credits in the Tax Incentive Matrix are transferrable.

We analyzed 18 economic development incentives under the CBT in place prior to December 2020. The estimated revenue loss in FY 2021 associated with these incentives is \$1.1 billion – more than one third of the total projected \$3.2 billion in CBT collections for the entire fiscal year. Notably, none of the foregone revenue is attributable to the four CBT incentives targeted at businesses located in distressed communities or the provision of jobs for marginalized/under-represented residents – two defining characteristics of our less exacting definition of equitable economic development (see Matrix in Part 4). There is no projected revenue loss for these four credits in fiscal years 2020 and 2022, as well. This means that for three consecutive fiscal years, no state resources will go to equitable economic development, even for programs with such stated objectives. This presents two problems for policy. First, the lion's share of CBT incentives that are actually used have nothing to do with equity and serve some other market purpose. This is a public purpose problem. Second, those incentives that are explicitly designed to advance equity go unused or cannot be identified. This suggests a problem of policy design, execution and commitment. Another three of the 18 CBT incentives have equity components, but there are no available data available indicating whether they have been used or what the foregone tax revenue is associated with them, compounding the problem of policy design, execution and commitment.

2. Sales/Use Tax Incentives

We analyzed six NJ Sales/Use tax incentives specifically related to economic development. The State nominally concentrates four of the six as well as two CBT tax incentives in municipalities with a place-based designation of market disadvantage called Urban Enterprise Zones (UEZs). Established in NJ in 1983 and based on an unchanged model of economic development since then, there is very little evidence to show that designating



parts of a city as a UEZ accomplishes significant equity objectives. In fact, a recent NJ study shows the opposite.²⁰ However, the zones continue to be renewed by the State legislature without public oversight or justification, long after most states and the federal government abandoned these demonstration programs for failure to yield significant results.

Because the criteria for UEZ designation²¹ incorporate public policy concerns for job creation, retention and tax base growth in areas needing revitalization, we concluded that four of the six Sales/Use Tax incentives address a public purpose in equitable economic development as do the two CBT tax incentives—an employee tax credit and an investment credit in UEZs that resulted in no foregone revenues in 2021. That is, they were not used and therefore not effective. Just two of the four Sales/Use Tax incentives in UEZs produced foregone revenue, and it was substantial: \$314.2 million. These incentives were associated with business purchases (100 percent exemption on purchases of tangible property and services) and the reduction of the State Sales/Use Tax on eligible consumer purchases at businesses in UEZs. But mere location of generalized credits in one of these municipalities does not constitute effective targeting of public resources for undernourished markets making continued reliance on UEZs unjustified in the face of other alternatives.

3. Monitoring Incentives: Compliance Avoidance by the State

Even a prudential, if not constitutional, expectation that tax incentives to private businesses advance a public purpose would require compliance mechanisms. Compliance is only possible with accurate information that ought to be public. Yet information concerning tax incentives is only available to the public in New Jersey's *Tax Expenditure Report* (TER). Also referred to as a "tax expenditure budget," the TER is a document that is required by State law

²⁰In the most recent UEZ evaluation commissioned by the State, it was reported that "Although the program appears to benefit participating businesses, an analysis of several...socioeconomic metrics...including household income, unemployment, and home value show that individuals living in UEZs are not necessarily better off than individuals living in comparable non-UEZ areas " (Thomas Edison University et al 2019, 6-7).

²¹See New Jersey Department of Community Affairs, Urban Enterprise Program (UEZ), Program Procedures, at <https://www.nj.gov/dca/affiliates/uez/publications/pdf/ProgramProcedures.pdf>.



(PL 2009, Chapter 189) to be released along with the Governor's annual budget message. Under the law, the TER must include the estimated costs (foregone revenues) for each tax incentive (tax expenditure) along with the following information:

- 1) Effective date of the tax expenditure;
- 2) Objective of the tax expenditure;
- 3) Description of the tax expenditure;
- 4) Effectiveness in achieving its stated purpose;
- 5) Effect of each State tax expenditure on the fairness and equity of the distribution of the tax burden;
- 6) Public and private costs of administering the State tax expenditures;
- 7) A measure of the reliability of the (revenue loss) estimate.

The State's first TER issued in 2010, stated that, "It was not possible for the Division of Taxation to formulate data to attempt to address several requirements of the law "(NJ Department of the Treasury, 2010, p. 3), including items 2,4,5 and 8 listed above. More than a decade later in the State's 2021 TER, no information is provided for items 4,5 and 6:

- For item 4, no information is provided on the effectiveness of the credit achieving its stated purpose with the exception of the Garden State Film & Media Jobs Credit for which a Massachusetts study is cited. This study does not address the effectiveness in meeting the purpose of the NJ film incentive.
- For item 5, there is no information provided by the State as to how the effect of the expenditures on fairness and equity is going to be defined and measured.
- For item 6, no information is provided on the costs of administering the incentive programs.

The failure to satisfy the statutory requirement of information evaluating whether incentives are achieving their purpose (item 4) suggests a system of taxpayer expenditures without compliance safeguards. The failure to disclose the actual costs of administering the program is a clear violation of the State's duty to be transparent with public money and suggests



inefficiency. Both of these are problems for economic equity. For many, the passage of the State's Economic Recovery Act in December 2020 promised solutions to some of these shortcomings. We found mixed results.

4. Changes under the New ERA

Many of the shortcomings criticized in the 2013 EOA were supposed to be remedied in the Economic Recovery Act (ERA) of 2020.²² The ERA is an omnibus act encompassing several individual acts that provide for new tax incentives, modify existing tax incentives and establish other economic development programs such as grants and loans,²³ providing for \$14.4 billion in tax incentives and other business assistance over a six-seven-year period.²⁴ Supporters of the Recovery Act, including almost all members of the legislature, saw its passage as a way to attract businesses and investment into the state. Critics of the Recovery Act questioned the size of the incentive package in light of the State's budgetary problems triggered by the pandemic, as well as longer-term structural issues including a pension system that has one of the largest funding gaps in the nation.²⁵ The Recovery Act was also criticized on the speed and lack of transparency with which it was passed by the Legislature with virtually no public input. In fact, many members of the Legislature said that they had not read the nearly 300-page bill²⁶ prior to voting to approve it. The bill was signed by the Governor just three weeks after it was introduced in the Legislature.

²² P.L.2020, c.156 (C.34:1B-269 et al.)

²³ The full statutory text of the program can be found in sections 20-34 of the Economic Recovery Act of 2020. https://www.njleg.state.nj.us/2020/Bills/S3500/3295_II.PDF

²⁴ For summary of the act see <https://www.njeda.com/economicrecoveryact/>

²⁵ Goodman, J., & Benz, S. (2020 February 5). *How states use annual caps to control tax incentive costs*. PEW. <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/02/05/how-states-use-annual-caps-to-control-tax-incentive-costs>.

²⁶ Nineto-Munoz, S. (2021 January 8). Gov. Murphy signs massive \$14 billion corporate tax break bill. *NJ.com*. <https://www.nj.com/coronavirus/2021/01/gov-murphy-signs-massive-14-billion-corporate-tax-break-bill.html>



CLiME's analysis of the equitable aspects of the Recovery Act focuses on several of its primary features and finds a continuing failure to use public dollars to close longstanding gaps in economic mobility. Although the legislature addressed place-based economic distress more forcefully in the Aspire Credits and Emerge Credits programs, the retention of transferability and lack of more specific eligibility guidance makes their potential impact less clear.

- **Aspire Credits.** The Aspire Program Act (Aspire) replaces the Economic Redevelopment and Growth Program (ERG). It provides tax credits to commercial and residential projects for gap financing costs. If the project is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index (MRI) distress score of at least 50, the maximum available tax credit increases to \$50 million. Among the State's 566 municipalities, 44 have MRI distress scores of at least 50.²⁷ Credits are transferrable.
- **Emerge Credits.** Emerge²⁸ (NJ Emerge) replaces the *Grow NJ Program*. It provides CBT and Insurance Tax credits for new job creation resulting from new private investment in the state. Emerge focuses on specific targeted industries and certain designated geographic areas, allowing for larger benefits based primarily on location, business activity, and other bonus criteria. Where a project falls within the benefit range is largely dependent upon these factors. Credits are transferrable.
- **Food Desert Credits.** The Act provides up to \$40 million per year for six years in tax credits, loans, grants, and/or technical assistance to increase community access to nutritious foods and develop new approaches to alleviate food deserts.²⁹ This is unquestionably meant to be an equitable investment of public dollars and follows the

²⁷It is not clear why an MRI score of 50 was selected as the cut-off. Nor is it clear why the newly created Innovation Evergreen Fund described below does not use this same indicator as a targeting criterion. Unused Aspire credits are transferrable so it is uncertain as to how their impact on equitable economic development can be assessed.

²⁸ Secs 68 – 81, P.L. 2020, c. 156, [N.J.A.C. 19:31-22](#)

²⁹These deserts are defined as "...geographic areas where residents' access to affordable, healthy food options (especially fresh fruits and vegetables) is restricted or nonexistent due to the absence of stores selling groceries within convenient traveling distance (Food Empowerment Project, 2021).



lead of other states and the federal government in the Healthy Food Financing Initiative. However, the credit is transferable subject to certain limitations, so it is uncertain as to its impact on the availability of affordable and healthy food in distressed communities and on equitable economic development.

- **Innovation Evergreen Fund.** Created to fund venture capital, the EDA will auction tax credits valued at \$60 million annually to capitalize the Innovation Evergreen Fund (the Fund) over a five-year period. The State will be an equity investor in partnership with private venture capital firms. Companies will bid on the tax credits that they will be able to use to offset NJ CBT and insurance tax liabilities. Auction proceeds will be deposited into the Fund and awarded to venture capital firms making matching investments in early-stage and emerging growth businesses, especially those in life sciences, financial technology, advanced manufacturing and cyber security. Like tax expenditures, the Fund will not require a specific budget appropriation and will not have to go through annual budget review. The economic equity component of the Fund is hampered by a questionable choice of geographic preference. Under the Act, the Fund must target 25% of its proceeds to companies that invest in businesses located in census tracts in New Jersey's 75 Opportunity Zones (see Exhibit 3). However, New Jersey's Opportunity Zone tracts are not all located in the state's most distressed cities and there is considerable criticism nationally of Opportunity Zone designations relating to its questionable impact on distressed communities.³⁰ Within one year after its inception, the EDA will be required to carry out a disparity study of investment by the Fund in women-owned and minority-owned businesses. Based on the study's findings, EDA has the authority to set aside Fund money for investment in these businesses.

³⁰ According to the Urban Institute (2018), "[t]he actual Opportunity Zone designations indicate only minimal targeting of the program toward disadvantaged communities with lesser access to capital relative to all eligible tracts." It is not clear why Opportunity Zones were selected as the target areas, especially given the fact that other parts of the 2020 Act, e.g., the Aspire Program described above, target other areas for special treatment.



Beyond these primary features of the Recovery Act is a Transformative Project kicker for Aspire or Emerge Credit projects of substantial scale—commercial projects utilizing at least 500,000 square feet of space, or a residential project with at least 1,000 units. Only 10 transformative projects may be approved throughout NJ within a six-year period and no more than two in a single municipality. The addition of yet another place-based bonus factor is welcome. From the traditional standpoint of economic development incentive policies, it represents overdue reform. However, from the more important standpoint of *equitable* economic development, it is not enough to spur needed investments in transformative economic change for the New Jersey communities that need it.³¹

Earlier we said that economic development is equitable when it **incentivizes growth that remediates gaps in economic mobility for households and communities because of location, market exclusion, sectors in need of support, or historic discrimination and structural bias**. Several of these new legislative programs in the ERA represent genuine efforts to meet that definition. Yet there is no reason that other business incentives should not contain commitments to equitable economic growth with taxpayer dollars. We would like to see both the Innovation Evergreen Fund and the Angel Investor Tax Credit Program, to take two examples, do the same.

³¹ We omit analysis of several other incentive programs in the Recovery Act because their potential impact on equitable economic development is unclear. For instance, the Brownfields Redevelopment Credits program could positively affect lower-income, previously industrial areas at environmental risk, but the language is unclear. Similarly, the Historic Property Reinvestment Credits program may encourage gentrification and housing displacement by raising costs in low-income communities with disproportionately older housing infrastructure.



Part 3: Conclusions and Recommendations

The analysis of New Jersey's economic development business incentives in this report demonstrates a lack of economic equity in the spending of billions of taxpayer dollars for purported public benefit or purpose. By learning from a well-documented history as well as the reforms in other states, New Jersey can do better. Economic equity entails using public dollars to close mobility gaps that have long produced inequality in the state based on race, location and class status. It begins with the policy imperative of seeing equitable growth at the heart of public purpose, then demanding a clear nexus between investment and return through a transparent process with accountability built into it.

The public purpose doctrine—the principle that public funds should not go to private parties without a public purpose—emerged in the mid-1800s following public investments in speculative railroad construction.³² Legal commentators have argued that business incentives have no justification under state constitutions,³³ legal challenges have often failed to overcome the deference that courts give to co-equal branches of government. As the state practice of providing tax incentives has increased over the last 30 years, almost none incorporate systematic reviews of their effectiveness,³⁴ and they remain, like New Jersey's, understood only by a few.

Yet change is possible, using the “multidimensional view of economic life” we discussed in Part 1. For example, Minnesota has a business assistance law that requires recipients of incentives establish and publish job creation and wage-level goals with a clawback or

³²Edward W. De Barbieri, *Lawmakers As Job Buyers*, 88 *Fordham L. Rev.* 15, 20 (2019).

³³ See, e.g., Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 *RUTGERS L.J.* 907, 945 (2003) (“[T]he public purpose requirement as a constraint on legislative action is a dead letter today.”) See Dale F. Rubin, *The Public Pays, The Corporation Profits: The Emasculation of the Public Purpose Doctrine and a Not-for-Profit Solution*, 28 *U. RICH. L. REV.* 1311, 1313 (1994) (“[A]n examination of the historical development of the Public Purpose Doctrine establishes that the proliferation of ... public subsidies ... is unconstitutional.”).

³⁴Barbieri, *supra* at 36.



recapture provision where goals are not met.³⁵ Indianapolis deployed three important innovations: the use of equity indicators as criteria for tax incentives (e.g., living-wage jobs), a formula for scoring recipients' success at returning public benefit and a requirement for some incentives that tax gains be reinvested by the company into expanded benefits for workers (e.g., childcare support).³⁶ Others have suggested that state tax incentives follow the equity considerations in the new market tax credits model of the federal tax code, a model generally considered more effective than empowerment zones.³⁷ Noting New Jersey's particularly poor rating at designing and evaluating its tax incentives, a PEW study shows that more successful states plan for professional evaluation, regularly measure the fiscal impact of their programs and makes sure that findings inform policymaking.³⁸ Among New Jersey analysts, Sheila Reynertson's may be the most comprehensive recommendations, which include shorter award timeframes, stronger net benefits tests, local hiring agreements and strict reporting and evaluation criteria.³⁹

From our analysis, we recommend several steps that New Jersey should take to make equitable economic development a central public purpose of its business tax incentives policies.

³⁵Act of May 24, 1995, ch. 224, § 58, 1995 Minn. Laws 1686, 1721 (codified at [MINN. STAT. ANN. § 116J.991](#) (West Supp. 1996), discussed in Michael H. LaFave, *Taking Back the Giveaways: Minnesota's Corporate Welfare Legislation and the Search for Accountability*, 80 Minn. L. Rev. 1579, 1581 (1996).

³⁶Lourdes German and Joseph Parilla, "How Tax Incentives Can Power More Equitable, Inclusive Growth," (May 5, 2021), Brookings.

³⁷See, e.g., Rebecca Kerley, *New Market Tax Credits, Fiscal Federalism, & the Dormant Commerce Clause*, 39 Va. Tax Rev. 111, 112 (2019) ("The NMTC was, and remains, an antipoverty tool-- one of many such found in the federal tax code."). For a comparison of NMTC and the federal empowerment zone policies it largely replaced, see ECONOMIC DEVELOPMENT PROGRAMS AS TOOLS FOR URBAN REVITALIZATION: A COMPARISON OF EMPOWERMENT ZONES AND NEW MARKETS TAX CREDITS, 16-NOV J. Multistate Tax'n 22, 29-30, 2006 WL 3491881, 7-8.

³⁸Pew Charitable Trust, "How States Are Improving Tax Incentives for Jobs and Growth," (May 2017).

³⁹See Reynertson, *supra*, "Reining in Corporate Tax Subsidies: A Better Economic Development Playbook for New Jersey."



1) Create an equitable system of business incentives by adopting performance rubrics. Empanel an expert state task force to develop a set of economic equity indicators that become the basis for a scorecard or rubric by which tax incentive programs are evaluated. Fortunately, the Economic Recovery Act already incorporates a net benefit analysis to its provisions.⁴⁰ The rubric that we recommend here includes additional indicators of equitable growth.

We recommend that these equity indicators incorporate the following subject areas:

- **Job Creation Baselines** (e.g., living wage thresholds; availability of childcare; transportation access; opportunities for mobility; sector preferences based on growth potential and employment expansion)
- **Location Targets** (e.g., reward local tax base growth for distressed areas; bonuses for census tracts with median household incomes below 60% of the regional/area median; bonuses for numerical jobs goals employing certain percentages of unemployed and underemployed persons)
- **Access to Capital Goals** (e.g., Create new pathways to capital; Disincentivize institutional bias; Reward differences in investor backgrounds; Create new pathways to business and supply chain networks)
- **Median Income Growth Baselines** measuring the growth in local incomes attributable to the effects of the incentive on locally employed people whose baseline incomes were a certain percentage below the immediate area median before the incentives.
- **Housing Stability Baselines** measuring movement in the rate of evictions and foreclosures of area residents from program baseline to each subsequent reporting period.
- **School Absenteeism Baselines** measuring educational stability of area students by comparing baseline absenteeism rates before the incentives and after they take effect.

⁴⁰ See methodology incorporating IMPLAN at <https://www.njeda.com/wp-content/uploads/2021/05/Appx-B-Net-Benefit-Analysis.pdf>.



- 2) Amend the Economic Development Authority (EDA) enabling Statute.** Following the ERA model, the legislature should amend language in the EDA enabling legislation, N.J.S.A. secs. 34:1B-1 *et seq*, to emphasize equitable economic development principles and to define relevant investment objectives for *all* programs under its plenary authority. Economic equity should be the law of the state. The law should define “public benefit” and “public purpose” to more explicitly condition the expenditure of public dollars on business incentives of *any* type on measurable equitable returns on investment. By “equitable”, state EDA should explicitly adopt the principle of overcoming market deficiencies, especially in areas of the state, business sectors, businesses and consumers that are demonstrably disadvantaged. The Authority should develop and use equity indicators like those recommended immediately above in the development of the statute’s implementing regulations. Regulations should require regular program eligibility reviews, sunset provisions, claw back provisions and annual public disclosure.
- 3) Target employment deficits.** The State should amend qualifying criteria for tax incentive programs with job creation/retention requirements to stipulate that a specific proportion of the jobs created/retained must go to individuals from under-represented/marginalized groups and establish monitoring mechanism to ensure that these targets are met. Many of New Jersey’s tax incentives include job creation/retention in their eligibility criteria. For example, in the Grow NJ Assistance Program and in Emerge, its replacement program established in the 2020 ERA, businesses receiving the incentive are required to create or retain a specified number of fulltime positions. With few exceptions, there is no language in credit eligibility requirements that says anything about for whom these jobs should be created. Further, these requirements are limited to only some of corporate tax incentives when most can be characterized by common market deficits regarding employment of disadvantages workers from disadvantaged communities.
- 4) Require periodic evaluations for compliance and effectiveness.** The State should, either through the Office of the Comptroller or by independent entities, conduct periodic evaluations of tax incentives that are written into the tax code and stay in effect until they are specifically discontinued by the Legislature and Governor. For the



most part, the State does not audit business tax incentives and very little data are publicly available to assess the efficacy of the incentives. Direct expenditures, by contrast, last only as long as the budget cycle, unless otherwise stipulated in authorizing legislation or appropriation bills. Many states are now conducting evaluations to determine whether tax incentives are achieving their stated purpose. (We applaud the creation of an Office of the Inspector General within the NJEDA as well as the appointment of a Chief Compliance Officer.)

- 5) Enforce the TER Requirements.** The State should enforce requirements in NJ PL 2009, Chapter 189 for the annual Tax Expenditure Report. The TER does not include information for several of the requirements stipulated in the law including their impact on the fairness and equity of the distribution of the tax burden. Furthermore, there are incentives for which the TER provides no information. If all information required by State law were to be included in the TER, as well as information on refundability and transferability of tax credits, the document would be a valuable source to assess whether individual tax incentives are working, and, importantly for equitable economic development, who is benefiting from the incentives.
- 6) Restrict Transferability and Refundability.** The State task force should study the elimination of transferrable and refundable credits. The primary question to be addressed is whether it makes sense for tax breaks to be sold to companies the state never set out to help.
- 7) Transparency.** The State should insist on a policy of absolute transparency in providing the public with easily accessible information about tax expenditures of public funds, whether or not a statutory duty exists. This norm of transparency extends to easily accessible notification protocols for the availability of business tax incentives in order to promote broader participation.
- 8) Consistency.** The State should ensure that all its websites that discuss tax incentives are providing the same information for individual incentives. For some incentives, there are differences in the information provided on State websites, even with regard to the names of the incentives.



Part 4: Matrix of New Jersey Business Tax Incentives

Exhibit 1

Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
CORPORATION BUSINESS TAX CREDITS							
1. Angel Investor Credit Program	2013	Stimulate investment in NJ emerging technology businesses.	20% of investment in a NJ emerging technology business;	Business must employ less than 225 persons - at least 75% must work in NJ	Potential increase of credit to 25% if business is M/WBE or located in Opportunity Zone or New Markets Tax Credit Census Tract.	\$25,000,000	3
2. Business Employment Incentive Credit (BEIP)	1996 Inactive	To encourage businesses to locate and expand in NJ	Credit of up to 50% for newly created high tech biotech jobs; up to 80% for companies meeting Smart Growth objectives	Business must create at least 10-25 jobs in a 2-year period & show BEIP is "material" factor in job expansion/relocation.		\$173,600,000	N/A
3. Business Retention and Relocation Assistance Credit	1996 Inactive	To assist businesses in retaining jobs in or locating jobs to NJ.	\$1,500 award for each job retained; possibility of an additional 50% award	Retain at least 50 Full-time jobs; remain in NJ for credit term plus 5		\$6,800,000	N/A



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
			for businesses retaining 2,000+ jobs	years; demonstrate incentive is a material factor in decision.			
4. Economic Recovery Credit	2002	Encourage investment in qualified municipalities	2-year credit for each new full-time job created job	Business located in UEZ and not receiving a UEZ benefit	Businesses encouraged to relocate or expand in qualified municipalities, particularly distressed municipalities.	\$0	N/A
5. Economic Redevelopment and Growth Program (ERG)	2013 Inactive	To close revenue gaps in development projects	Benefit of up to 75% of state and/or local tax revenues	Developer with a project with a financing gap in areas targeted for growth	Benefit of up to 85% of state and/or local tax revenues if located in a Growth Zone	\$54,000,000	3
6. Effluent Equipment Tax Credit	2002	To treat effluent from wastewater treatment systems.	Tax credit for purchase of effluent treatment equipment.			\$0	1
7. Garden State Film and Digital Media Jobs Act Credit	2006	Incentivize production companies to film and create digital media content in NJ	Films: 30% credit (35% in 7 southern counties + MercerCty) for expenses incurred in production certain films	Production company must incur at least 60% of total film production expenses in-state (exclusive of post-	Additional 2% credit if application includes a diversity plan approved by NJ EDA and that the Authority has verified that the applicant	100,000,000	



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
			Digital media: Credit of 20% credit (25% in 7 southern counties + Mercer County)	production costs)	has met or made good faith efforts in achieving the goals stated in the diversity plan.		
8. Grow New Jersey Assistance Program	2013 EXPIRED 2019	Job creation and retention	\$500-\$5,000/job/year; bonus \$250-\$3,000/job/year	Businesses that are creating or retaining jobs in New Jersey		\$337,900,000	1
9. Manufacturing Equipment and Employment Investment Tax Credit	1994	To offset cost of manufacturing equipment purchase and to support creation of new jobs.	In yr. 1, 2% credit on new machines/equipment. In next 2 years, an additional 3% credit for creating new jobs	Companies purchasing manufacturing equipment		\$10,600,000	1
10. Neighborhood Revitalization Tax Credit	2002	To incentivize investment of projects sponsored by nonprofits	Credits up to 100% of provided to a nonprofit to implement project.	Investor providing financial assistance to a nonprofit sponsor may be granted a certificate for credit	Credit available for businesses located in areas located in municipalities that are eligible to receive aid under specific NJ laws	\$5,400,000	N/A
11. New Jobs Investment Tax Credit	1993	Job creation	Credit up to 10% of taxpayer's qualified investment	Investment in a new or expanded business facility.		\$8,600,000	1



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
			in a new or expanded business facility.				
12. Offshore Wind Tax Credit Program		To encourage investment in land-based offshore wind industry projects	Tax credits equal up to 100% of the qualified capital investment made	For investment in offshore-wind related facility of \$50M (\$17.5M if a tenant) in the 7 southern counties; employ at least 300 new FT employees at the facility		N/A	N/A
13. Redevelop't Authority Project Tax Credit	1991	Job creation	\$1,500 credit for each of 2 years for new employees	Business located in a qualified municipality whose work consists primarily of mfg or other business that is not retail sales or warehousing	To receive credit, new employees must be residents of the qualified municipality who were unemployed at least 90 days or on public assistance prior to hire.	\$0	1
14. Remediation Tax Credit	2004	Contaminate site remediation	100% credit for eligible costs of the remediation	Taxpayer conducting site remediation		\$0	1



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
15. Research and Development Tax Credit	1998	To encourage R&D research and development	Credit of 10% of qualified research expenses	Corporations involved in product discovery and innovation		\$256,400,000	N/A
16. Urban Enterprise Zone Employee Tax Credit	1988	To provide tax credit for businesses operating in a UEZ	To allow a business, that is not retail sales/warehouse, in an UEZ to receive an employee tax credit.	Mfg or other business (not retail or warehouse) operating within a UEZ	In the first three years, 25% of new hires must meet at least one criteria including: residents of municipality with a UEZ; NJ residents unemployed for at least 6 months prior to being hired; recipients of public assistance for at least 6 months prior to being hired; determined to be low-income individuals pursuant to the Workforce Investment Act of 1998	\$0	1
17. Urban Enterprise Zone Investment Tax Credit	1988	To increase investment in UEZs.	A one-time credit of 8% for each new investment	A UEZ business that is not retail or warehouse	In the first 3yrs 25% of new hires must meet at least one criteria:	\$0	1



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
				oriented and unable to receive employee tax credits	resident of UEZ municipality; NJ resident unemployed for at least 6 months prior to being hired; recipients of NJ public assistance programs for at least six months prior to being hired; determined to be low-income individuals pursuant to the Workforce Investment Act of 1998		
18. Urban Transit Hub Tax Credit	2009	To incentivize capital investment and employment growth		Capital investment made by a qualified business to a location defined as an Urban Transit Hub.		\$107,700,000	1
SALES AND USE TAX INCENTIVES							
19. Capital Improvements to Real Property	1966	To encourage capital improvement	when work performed results in a capital improvement exempt from tax.	No sales tax on labor portion of capital improvement that increases		N/A	N/A



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
				property value			
20. The Sales and Use Tax Exemption (STX) Program	N/A	Sales tax exemption for construction and renovation purchases	No tax on machinery, equipment, furniture	Purchases for construction and renovation of a new business	UEZ related	N/A	N/A
21. Property Purchased for Film or Video Productions	1999	To encourage commercial production of motion pictures and videos in NJ.	Tangible personal property used directly and primarily in the production of film or video for sale are exempt from tax.	Taxpayer purchasing property to produce film or video for sale		\$18,100,000	4
22. The Energy Sales Tax Exemption Program, Salem County	N/A	Energy sales tax exemption	exemption for retail sales of electricity/natural gas and their transport to Salem Cty mfg businesses	Mfg business, located in Salem County, with at least 50 employees, and at least 50% directly involved in mfg process.	UEZ related	N/A	N/A
23. Urban Enterprise Zone Exempt Business Purchases	2008	To stimulate economic activity	100% Tax exemption for UEZ businesses on purchases of tangible	UEZ located businesses can purchase items for the use of the	In the first three years, 25% of new hires must meet at least one criteria: residents of	\$162,000,000	3



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
			personal property and services for exclusive use at their UEZ location.	business within Zone without payment of sales tax.	municipality with a UEZ; NJ residents unemployed for at least six months prior to being hired; recipients of public assistance programs for at least six months prior to being hired; low-income individuals pursuant to the Workforce Investment Act of 1998		
24. Urban Enterprise Zone Special Sales Tax Rate	1983	To stimulate economic activity in designated UEZs	Allows qualified businesses in a UEZ to collect Sales Tax at one-half the regular rate on the retail sale of goods other than motor vehicles, alcoholic beverages, cigarettes, manufacturing	Qualified businesses in a UEZ	In the first three years, 25% of new hires must meet at least one criteria: residents of municipality with a UEZ; NJ residents unemployed for at least six months prior to being hired; recipients of public assistance programs for at least six months prior to being hired;	\$152,200,000	2



Incentive	Effective Date(s)*	Objective	Description	Eligibility criteria	Equity Provisions	2021 Estimated Foregone Taxes**	Reliability Ranking of Estimate***
			equipment, and energy.		low-income individuals pursuant to the Workforce Investment Act of 1998		

Table notes

*Date incentive was initiated.

** Estimate foregone taxes = taxes NJ would have collected from businesses in the absence of the incentives.

***Reliability Rankings

1 - indicates the highest reliability of estimate - The tax liability of the entire population of verified tax returns is recalculated with the tax expenditure removed and from this is subtracted the actual tax liability.

2 - A similar process to 1 is performed, but on a statistical sample of returns rather than the entire population of returns.

3 - A similar process to 2, but the sample returns contain incomplete or unverified data.

4 - Aggregate data from an external source is applied to average or marginal tax rates.

5 - The Federal estimate of comparable tax expenditure is scaled to a New Jersey level

6 - Another state's estimate of its comparable tax expenditure is scaled to a New Jersey level.



Exhibit 2: New Jersey Urban Enterprise Zones as of December 2020

Asbury Park*	Bayonne*	Bridgeton**
Camden**	Carteret*	East Orange**
Elizabeth**	Gloucester City*	Guttenberg
Hillside*	Irvington*	Jersey City**
Kearny*	Lakewood*	Long Branch*
Millville*	Mount Holly**	New Brunswick**
Newark**	North Bergen*	North Wildwood
Orange*	Passaic*	Paterson**
Pemberton*	Perth Amboy*	Phillipsburg*
Plainfield*	Pleasantville*	Roselle Borough*
Trenton**	Union City*	Vineland*
West New York**	Wildwood	Wildwood City
Wildwood Crest		

*Distressed Municipality **Distressed Municipality & Urban Transit Hub



Exhibit 3: NJ Municipalities with Opportunity Zones as of April 2021

Atlantic City*	Manchester Township
Asbury Park*	Millville*
Bayonne	Neptune City
Berkeley Township	Neptune Township
Bound Brook Borough	Newark*
Bridgeton*	New Brunswick*
Burlington City	North Bergen
Camden*	North Plainfield Borough
Carneys Point Township*	Orange Township
Carteret	Palmyra Borough
Cliffside Park Borough	Passaic*
Clifton	Paterson*
Deptford Township	Pemberton Township
Dover	Pennsauken Township
East Orange*	Perth Amboy*
Egg Harbor City*	Phillipsburg*
Egg Harbor Township	Pine Hill Borough
Elizabeth*	Plainfield*
Englewood	Pleasantville*
Fairview	Prospect Park Borough*
Flemington*	Rahway
Freehold Borough	Red Bank
Garfield	Riverside Township



Glassboro	Salem City*
Hackensack	Somers Point
Hamilton (Mercer County)	South Hackensack Township
Hillside Township	South River Borough
Irvington Township*	Sussex Borough
Jamesburg	Teterboro
Jersey City	Trenton*
Kearny	Union City*
Lakewood Township	Vineland*
Linden	West New York*
Lindenwold	West Wildwood
Lodi Borough	Wharton
Long Branch	Wildwood
Lower Township	Willingboro
	Woodbury*

*The Municipal Revitalization Index (MRI) is the State's official measure and ranking of municipal distress. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality. The larger the value, the higher the level of distress.



Glossary of Terms

Budget appropriation. Action by the State Legislature to make expenditures and incur liabilities for specific purposes.

The NJ Corporation Business Tax (CBT). The CBT is imposed on domestic/foreign corporations for the privilege of exercising their corporate franchise, doing business, employing capital, owning or leasing property or maintaining an office in NJ.

Growth zones. NJ cities with the lowest median family income according to 2009 census data. Original 4 zones were Camden, Paterson, Passaic and Trenton; Atlantic City was added in 2014.

New Market Tax Credit Census Tract (NMTC). The federal NMTC Program provides investors a tax credit against their federal income tax for equity investments in [Community Development Entities \(CDEs\)](#). CDEs are domestic corporations/partnerships that are intermediary vehicles for the provision of loans, investments, or financial counseling in low-income communities.

Municipal Revitalization Index (MRI). The MRI is a metric of municipal distress. Formerly known as the Municipal Distress Index (MDI), the MRI is calculated by the State based on eight indicators that measure social, economic, physical, and fiscal conditions in New Jersey municipalities. The higher the MRI, the greater the level of distress.

NJ southern counties. The seven counties are: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem.

Opportunity Zones. Opportunity Zones were created under the Federal Tax Cuts and Jobs Act of 2017 to encourage long-term investments in low-income neighborhoods. The benefits for investors are a deferral/exclusion from federal taxable income of certain capital gains from investment in the Zones, with the greatest benefits to those maintaining investments for at least a decade (the stated length of the program).



Sales/Use Tax. The Sales Tax is imposed on retail sales of most goods and some services, unless a sale is specifically exempted/excluded under the Sales and Use Tax Act. The Use Tax is imposed on items that are purchased for use in NJ for which the Sales Tax was not paid or for which a lower tax than is imposed by New Jersey was paid.

Urban Transit Hub Municipalities. NJ municipalities that qualify for this State designation are those that have a commuter rail station and are eligible for urban aid, have at least 30% of real property value exempt from property taxes, have property base wealth measured as equalized valuation under \$100,000 per capita. Nine municipalities qualify – Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken.



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