

Publications

Lessons from Round 1 of the Transformational Mixed-Use Development Tax Credit

Related Attorneys

Sean P. Byrne

Christopher J. Knezevic

Jonathan K. Stock

Rebecca "Elissa" Wilson

Scott J. Ziance

Related Services

Tax and Economic Development
Incentives

AUTHORED ARTICLE | Spring 2022

This article originally appeared in the Spring 2022 edition of *Development Incentives Quarterly*.

On March 2, 2022, the Ohio Tax Credit Authority (TCA) made 13 awards for a total of \$100,000,000 of tax credits pursuant to Section 122.09 of the Ohio Revised Code, the Transformational Mixed-Use Development (TMUD) Tax Credit.

In light of the \$100,000,000 in additional credits that will be available in each of state fiscal years 2023, 2024 and 2025, this first round provides an opportunity to learn about how this new program is being administered and allows potential applicants to better understand the anticipated scoring for rounds 2, 3 and 4.

For background, the TCA may award up to \$100 million total for each fiscal year in nonrefundable tax credits that may only be applied against foreign and domestic insurance premium taxes. The credits can include up to \$80 million each year for "Major City Projects" located within 10 miles of a major city (Cincinnati, Cleveland, Columbus, Akron, Dayton and Toledo), and the balance can be used for "General Pool" projects located at least 10 miles from a major city. Each project can be preliminarily approved for credits up to the lesser of (i) \$40,000,000 or (ii) generally 10% of the development costs. The project will have to demonstrate a transformational economic impact on the site and the surrounding area and integrate some combination of retail, office, residential, recreation, structured parking and other similar uses into one development.

Key Fact #1: In the first round, 42 applicants sought almost \$420,000,000. There were five applications deemed ineligible, due to ownership defects, failing to meet minimum requirements for size, or failing to demonstrate 51% committed equity.

Lesson #1: Carefully review the application guidance, guidelines and other instructions from the Ohio Department of Development (Development) and be diligent in satisfying those requirements in your

application. Development worked with applicants to address questions of compliance, but it is important to know how you will prove compliance. For instance, if there is an issue with your square footage for a Major City Project, can you still qualify with \$4,000,000 of new payroll being created? Does your application include that detail? Similarly, Development has cautioned that financing must be as of the application date, so it is critical to meet the financing eligibility requirements and have evidence to support financing at the time of application, and Development may reject later evidence of financing not included in the application.

Key Fact #2: Of the 37 eligible applications in the first round, 5 of the 28 Major City Project applications were awarded credits, but 8 of 9 General Pool applications were certified.

Lesson #2: If you have a project in the General Pool, then you should apply. The pool of Major City Projects still had 23 applicants that did not win, whereas only one General Pool applicant did not win. Moreover, the last awarded General Pool project score would have been in the five lowest scoring Major City Projects. There is a great opportunity for TMUD projects outside of the major cities throughout the State.

Key Fact #3: The scoring for this round has been published publicly, and 90 of the 100 points are objectively scored from information in the application.

Lesson #3: Review the scoring overview Development provided to TCA prior to preparing your application. Note where points are on a sliding scale (physical scope, end uses and others), where points are outside of a project's control (census tracts) and where points may be available depending on your facts. For instance, if you indicate that residential will be rented/sold, or if you have commercial tenants lined up, those are critical points. Similarly, be sure you satisfy all of the financing due diligence submission requirements (papers to support the funds being available).

Key Fact #4: Prior to releasing the Round 2 application (expected in just a few months), Development has indicated that it plans to provide clearer guidance on the required economic impact statements for the project. Those statements help drive at least 30% of the points.

Lesson #4: It will be critical that whomever is preparing your economic impact statement be very familiar with whatever guidance is provided by Development. While induced benefits may be disallowed, the taxes generated in the surrounding area, and by other projects catalyzed by the applicant's project, could be enough to make the difference between being certified and being left out of the credits. In the first round, that difference was less than 1.50 points.

Finally, we are reviewing the other non-client successful applications to glean any additional insights for future applicants.

Vorys encourages you to contact your Vorys attorney or advisor with questions about the TMUD Tax Credit. Please feel free to contact the following Vorys attorneys: Scott J. Ziance, 614.464.8287, sjziance@vorys.com; Christopher J. Knezevic, 614.464.5627, cjknezevic@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; Jonathan K. Stock, 614.464.5647, jkstock@vorys.com or R. Elissa Wilson, 614.464.6224; rewilson@vorys.com.