

Publications

Transformational Mixed-Use Development Tax Credit

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On December 9th, the Ohio Senate concurred with the House amendments to Amended Substitute Senate Bill 39 (S.B. 39), which will be sent to Governor DeWine for his consideration. Among other things, S.B. 39 creates the Transformational Mixed-Use Development Tax Credit (TMUD Tax Credit), which will be available to qualified large, transformative mixed-use development projects in the state of Ohio.

S.B. 39 authorizes up to \$100,000,000 in nonrefundable tax credits in each of FYs 2020-2023, which credits may only be applied against foreign and domestic insurance premium taxes. Projects must be certified prior to June 30, 2023. Each project can be preliminarily approved for credits up to the lesser of (i) \$40,000,000 or (ii) 10% of the development costs if the applicant owns the property (or 10% of the insurance company's capital contributed to the project). Unclaimed credits can be carried forward up to five years.

For the applicant to qualify, 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. Construction must begin within twelve months from when the project is certified by the Ohio Tax Credit Authority (TCA) or the certification will be rescinded, and those TMUD Tax Credits become available for other applicants.

The TMUD Tax Credit is bifurcated with \$20,000,000 annually allocated to projects not located within 10 miles of a city with a population of more than 100,000 (a "Major City") that include: (i) at least one new or previously vacant building that is at least two stories, (ii) at least one new or previously vacant building of at least 75,000 square feet, or (iii) two or more new buildings that are located on the same parcel or on contiguous parcels and, collectively, are at least 75,000 square feet.

Annually, \$80,000,000 of TMUD Tax Credits are available for mixed-use project sites located in or within 10 miles of a Major City. For each of these projects, the development costs must exceed \$50,000,000. In addition, one of the following criteria must be satisfied: (i) the project

includes at least one new or previously vacant building that is at least 15 stories, (ii) the project is at least 300,000 square feet, (iii) after completion, there be at least \$4,000,000 in annual payroll at the site, or (iv) the project includes two or more buildings that are connected to each other, are located on the same parcel or on contiguous parcels, and, collectively, are at least 350,000 square feet.

Applications for the TMUD Tax Credit must be made to the TCA and include, among other things, evidence that (i) within five years of the project certification, the increase in tax collections will exceed 10% of the estimated development costs and (ii) the project will not be completed unless the applicant receives the credit. In determining whether to certify a project, TCA will consider the potential impact in terms of architecture, accessibility to pedestrians, retail entertainment and dining sales, job creation, property values, connectivity and revenue from sales, income, lodging and property taxes. TCA will also consider the timing for completion of the project (and timing for realizing the increase in tax collections and other economic impacts).

To receive the full 10% TMUD Tax Credit, the applicant may establish the 10+% increase in taxes, after certification but before completion, by requesting to demonstrate to TCA, using a third party engaged by TCA and at the applicant's expense, that within one year following completion the taxes will have increased by at least 10% of the estimated development costs. Alternatively, the value of the TMUD Tax Credit will begin at 5%, with the remaining up to 5% available based on the increase in taxes at the project and surrounding area by over 5% during the five years following completion.

Finally, an applicant that is the property owner and is preliminarily approved for a TMUD Tax Credit may sell or transfer the rights to that credit to one or more persons for the purpose of raising capital for the certified project.

Vorys encourages you to contact your Vorys attorney or advisor with questions about this potential new 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; or Jonathan K. Stock, 614.464.5647, jstock@vorys.com.