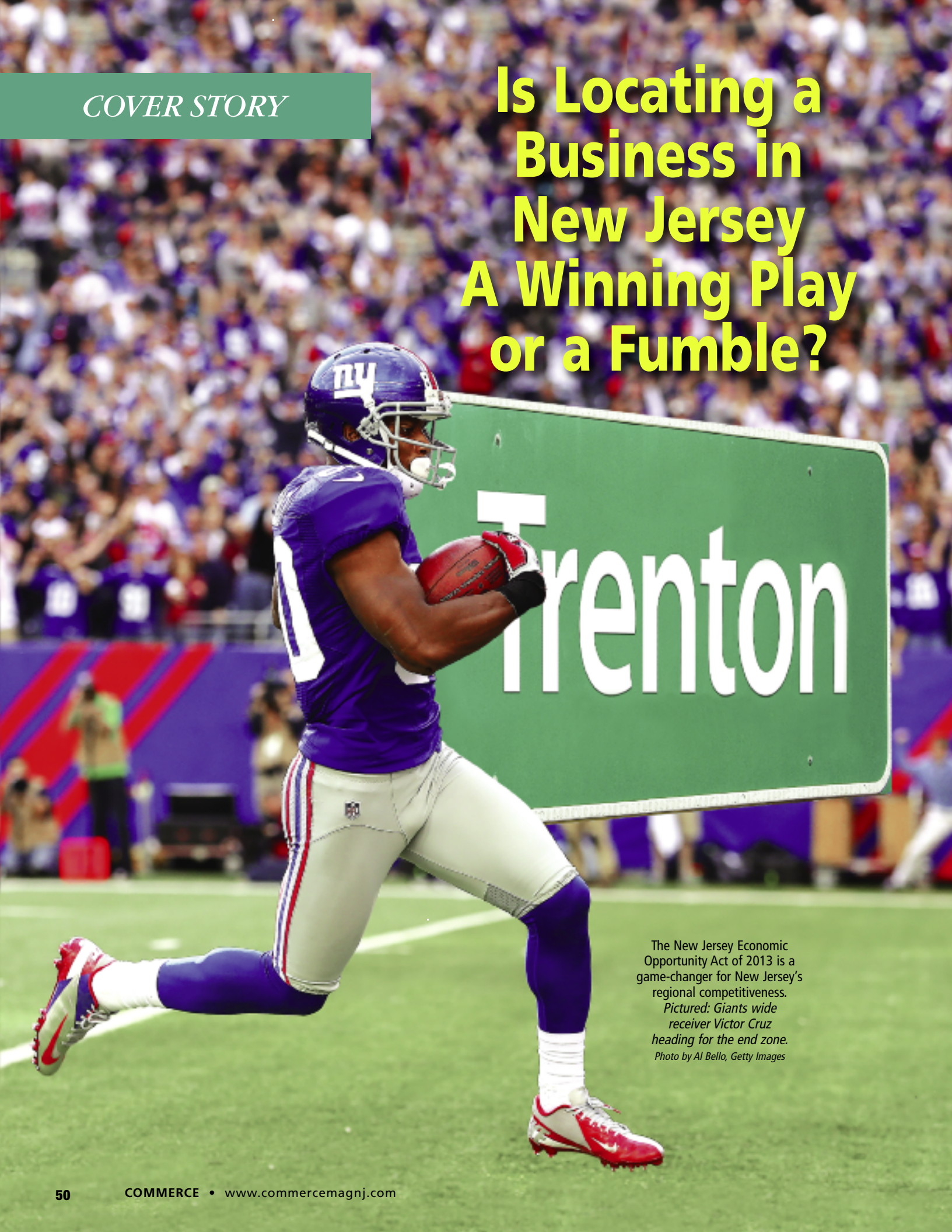
COVER STORY

Is Locating a Business in New Jersey A Winning Play or a Fumble?



The New Jersey Economic Opportunity Act of 2013 is a game-changer for New Jersey's regional competitiveness. *Pictured: Giants wide receiver Victor Cruz heading for the end zone.*
Photo by Al Bello, Getty Images

After being awarded $27.1 million in tax incentives, Steve Forbes signed a 10-year, 92,720-square-foot lease for Forbes Media to occupy the entire ninth and 10th floors of a Newport office tower in Jersey City. More of these deals are possible, thanks to the New Jersey Economic Opportunity Act of 2013.

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The CEO of a Kentucky-based technology company plans to expand operations in the Northeast to access the region's educational and research facilities. Where is this CEO going to make this investment and create jobs? Thanks to some sweeping policy changes enacted recently in Trenton, the answer may well now be the State of New Jersey.

Last Fall, Governor Christie signed into law the Economic Opportunity Act of 2013 (the Act). This comprehensive reform to the state's business incentive program portfolio is designed to spur significant new investment and job creation. For business owners and developers looking to access and secure incentives, it is vital to understand the Act's nexus to New Jersey's economy and how to qualify under this new initiative.

Regional, State-Based Incentives

Since the early 1990s, the northeastern states have seen the impacts of a turbulent economy, a decline in manufacturing and out-migration of jobs to the southern and western parts of the United States. In the tri-state region of New Jersey, New York and Pennsylvania, each state has adopted laws and revised incentive programs to keep and attract businesses. New York's recently announced "START-UP NY," for example, creates tax-free zones on land owned or affiliated with the State University of New York (SUNY) campuses. Businesses can operate in these zones virtually tax-free for 10 years, and employees receive income tax benefits. Pennsylvania offers "Keystone Opportunity Zones" and now has the "Single Application"—one comprehensive form completed by a business to be matched with Pennsylvania's best economic incentive programs.

The New Jersey Plan

The Economic Opportunity Act is New Jersey's response. It is the answer to the streamlined tools used by our neighboring states to attract jobs and new development. The Act combines the elements of five successful economic development programs into two: the Grow NJ Assistance Program (GrowNJ) and the Economic Redevelopment and Growth Program (ERG). GrowNJ becomes the primary new vehicle to spur job creation and retention, while ERG increases the state's capability to foster new development projects. The Act also creates enhanced incentives for the newly designat-

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ed "Garden State Growth Zones" in the cities of Camden, Trenton, Paterson and Passaic.

Incentives for Capital Investment and Creating or Retaining Jobs

The GrowNJ program encourages "economic development and job creation and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated outside the state. To implement this purpose, the program may provide tax credits to eligible businesses for an eligibility period not to exceed 10 years."

To initially qualify, GrowNJ requires a business to make a qualified capital investment at the business facility, ranging from $20 per square foot for an industrial business to $120 per square foot for a commercial entity engaging in new construction; create or retain a minimum number of jobs depending upon the type of business, ranging from 10 new jobs to 50 retained jobs; provide a "net benefit" to the state equal to 110 percent of the tax credit allocation amount; and certify the award is a "material factor" in the decision to create or retain the jobs.

The New Jersey Economic Opportunity Act of 2013 is designed to attract investment, create employment, and be a highly effective economic development tool for the Garden State.

The definition of "capital investment" is critical; it is site acquisition (if purchased within 24 months of the application date); site preparation and construction; and repair, renovation, improvement, equipping or furnishing of a building. If a business acquires or leases a qualified business facility, "the capital investment made by the seller or owner…shall be considered a capital investment by the business" and, if the building is leased, the capital investment is allocated to the premises."

The program has lower capital investment, job creation or retention, and net benefit thresholds if the business is locating in a Garden State Growth Zone or other eligible areas.

Base and Bonus Credits. Assuming these initial qualifiers are met, the base tax credit amount is determined by the location of the business. One of the objectives of the Act is to encourage businesses to relocate to the state's urban centers and other areas in need of development. Therefore, the highest tax credit levels occur in the "Garden State Growth Zones," the "urban transit hub municipalities," and other "distressed municipalities." The base tax credits can be as high as $5,000 per year for each job created or retained to a low of $500 per year. Moreover, businesses can achieve bonus tax credits to increase the base tax award; in fact, there are 16 such bonus awards ranging from an additional $250 per year to $5,000 per year.

Calculating the Potential Maximum Tax Incentive Credits. To calculate a maximum incentive award, the business's base and bonus credits are totaled, giving a

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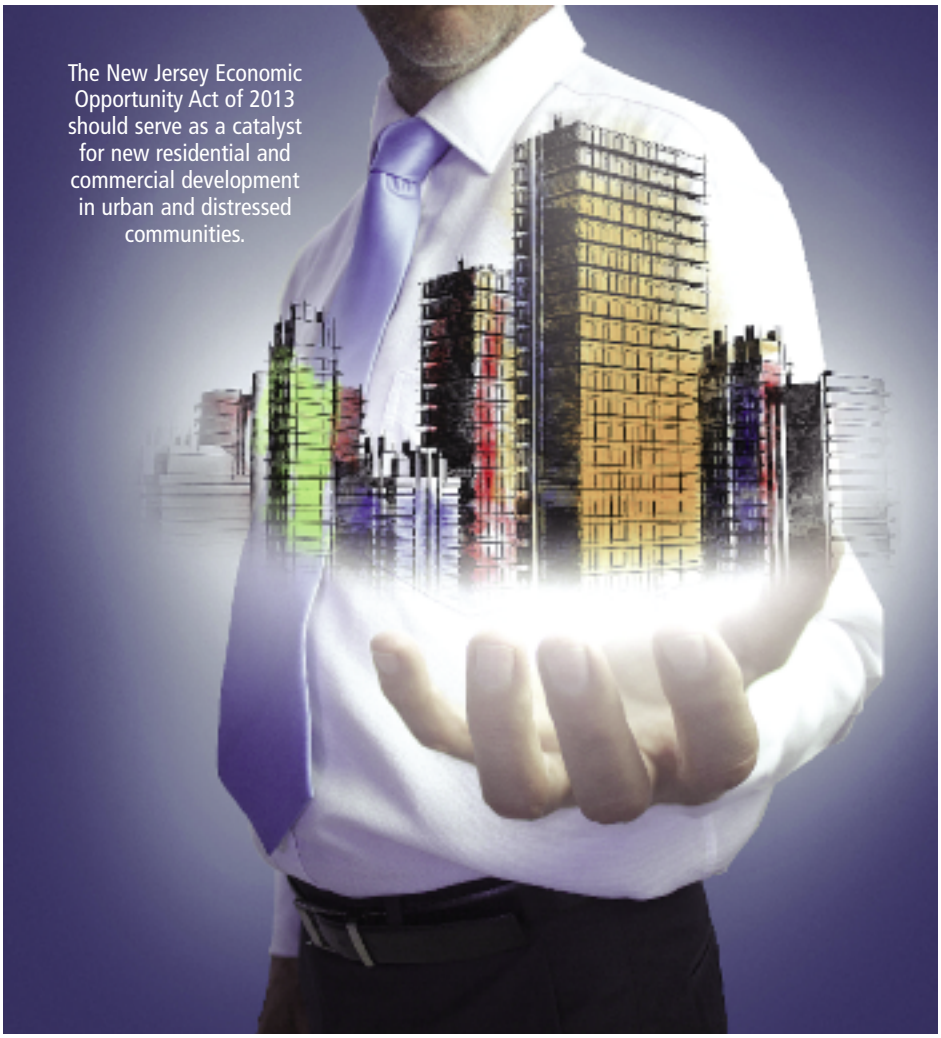
business an annual gross tax credit award per fulltime job created or retained. This gross tax award is capped, with progressively higher awards in areas defined under the Act.

For example, if a business is engaged in a "mega project" or is locating in a Garden State Growth Zone, the maximum annual gross tax credit per employee is $15,000. A mega project is generally defined as (1) a business in a port district, aviation district, a Garden State Growth Zone, or a priority area housing the U.S. headquarters of an automobile maker, and (a) making a capital investment in excess of $20 million and creating or retaining at least 250 fulltime jobs or (b) no capital investment but creating or retaining 1,000 jobs; or (2) a business in a urban transit hub making a capital investment in excess of $50 million and creating or retaining 250 or more fulltime jobs.

But if the business is locating in a non-priority eligible area, the maximum annual award is only $6,000 per fulltime job created or retained. Importantly, the Act also provides that new fulltime jobs receive 100 percent of the gross tax credit award while retained fulltime jobs receive 50 percent of the gross tax credit award.



The New Jersey Economic Opportunity Act of 2013 should serve as a catalyst for new residential and commercial development in urban and distressed communities.

Businesses need to complete and submit an application to the New Jersey Economic Development Authority (NJEDA), secure approval from the NJEDA's Board of Directors, and execute a project incentive agreement with the NJEDA. Those considering this incentive need to be aware of several important conditions and restrictions.

For example, the project and related employment must be maintained for one-and-one-half times the period in which the business receives the tax credits; and it must maintain 80 percent of its fulltime workforce from the last tax period prior to grant approval—to do otherwise will put the tax credits at risk of forfeiture.

Also, for each application in excess of $4 million of annual credits, the NJEDA has the discretion to reduce the award to an amount it determines is necessary to complete the project.

ERG Addresses Funding Gaps for Development Projects

While GrowNJ focuses on job creation and retention, ERG encourages "redevelopment projects in qualifying economic redevelopment and growth grant incentives areas that do not qualify as such areas solely by virtue of being a transit village, through the provision of incentive grants to reimburse developers for certain project financing gap costs." While ERG provides financing for revenue gaps, it is not a substitute for conventional debt and equity financing. The NJEDA will undertake a thorough analysis of an applicant's project financing and use of funds before awarding an ERG.

ERG-Residential. ERG provides qualified residential projects the possibility to secure an incentive grant up to 75 percent of the projected annual incremental state or local tax revenue expected to be generated from the development project. This limit is increased to 85 percent in a Garden State Growth Zone.

For residential projects with no incremental revenues or "if the authority determines that the estimated amount of incremental revenues pledged towards the state grant is inadequate to fully fund the amount of the state portion of the incentive grant, then in lieu of an incentive grant based on such incremental revenue, [a] developer shall be awarded tax credits equal to the full amount of the incentive grant."

The Act sets aside $600 million in aggregate tax credits for residential projects and divides the total allocation into sever-

al defined segments. A residential developer may qualify for up to 20 percent of the total project cost, with a 10 percent bonus for meeting certain affordable housing requirements. Residential projects applying for an ERG must meet the minimum investment threshold, ranging from $5 million in a Garden State Growth Zone to $17.5 million in a city with a population over 200,000.

ERG-Commercial. ERG-Commercial applicants can access tax incremental financing of 75 percent of the annual incremental state or local tax revenue for a period of 20 years, or 85 percent if the project is in a Garden State Growth Zone. The base amount of the reimbursement remains at 20 percent of the total project cost, with the base increased to 30 percent for projects in a Garden State Growth Zone. There are also a series of bonus credits which can increase the reimbursement for all projects by another 10 percent, raising the credit amount to 40 percent for projects in a Garden State Growth Zone and 30 percent for all other projects.

The ERG program is limited by a series of conditions defined in the Act. The Act provides that the NJEDA must consider a variety of factors in approving an ERG, including the economic feasibility of the project; the economic and social distress at the redevelopment site and in the area to be affected by the redevelopment; and the degree to which the redevelopment will advance state, regional, and local planning goals. Project applicants must have equity participation of at least 20 percent of the total project cost, and except for certain circumstances, an applicant must not have commenced construction prior to submitting an application to the NJEDA. Except in the case of a qualified residential project, the NJEDA must verify the financial gap and financial need of the project.

The New Jersey Economic Opportunity Act of 2013 creates enhanced incentives for the newly designated "Garden State Growth Zones" in the cities of Camden, Trenton (pictured), Paterson, and Passaic.

GrowNJ and ERG Application Dates

For a developer or business interested in securing incentives for a project, it is important for applicants to know the Act requires that all GrowNJ or ERG applications be submitted to the NJEDA before July 1, 2019. One year prior to this date, the NJEDA must submit a report to the governor and legislature on the effectiveness of the programs to create economic development and private sector job growth.

Property Tax Exemption for Garden State Growth Zones

In addition to the enhanced GrowNJ and ERG incentives for businesses and developers considering investment in the Garden State Growth Zones of Camden, Trenton, Paterson and Passaic, the legislature and governor realized that "extraordinary measures are required now to turn around the fate of these municipalities.

As such, the Act creates a property tax exemption program for improvements made to property located in the Garden State Growth Zones. If a Garden State Growth Zone Development Entity owns real property within the Zone and undertakes new construction, improvements, or substantial rehabilitation of existing structures, it may receive a 20-year property tax abatement on those improvements.

For the first 10 years, the Garden State Growth Zone Development Entity is exempt from payment of all taxes on the improvements to the property. In years 10 through 20, a payment of the percentage of taxes is phased in as payment in lieu of property taxes otherwise due, increasing by 10 percent annually until the 20th year, when the exemption lapses and the tax is paid in full.

Moreover, a property owner that is not a Garden State Growth Zone Development Entity but undertakes new construction, improvements or substantial rehabilitation of existing structures may receive a five-year exemption on the increased value of the property. The municipal governments containing the Garden State Growth Zones must have opted in to this property tax abatement program by Dec. 18, 2013.

The New Jersey Economic Opportunity Act of 2013 is designed to attract investment, create employment, and be a highly effective economic development tool for the entire state. It should serve as a catalyst for new residential and commercial development. Additionally, the Act's focus on providing greater incentives for urban and distressed neighborhoods should give a lifeline to these New Jersey communities. ■

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