

Discover Opportunities in the World of Tax Credits and Incentives

Understanding the legislative landscape is crucial in order to maximize state and federal incentive opportunities.

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Does your business operate in one of the 30 states that offer an historic rehabilitation tax credit program? If you are a developer embarking on "green" initiatives, are you building in one of the many cities and counties that offer financial incentives to promote green building? Have you received a waiver of building permit fees for new facilities certified under the Leadership in Energy and Environmental Design (LEED) program established by the U.S. Green Building Council (USGBC).¹ Have you considered whether your tax return should be amended to take advantage of programs for which you previously opted out but now may qualify?

If you are not reviewing all available tax credit and incentive programs to see if you may qualify, your company is likely leaving tax incentive money on the table. Multistate taxation may be a challenge, but economic development incentives is one area that can offer significant savings. Without the proper resources to track and identify opportunities, develop compelling proposals, and negotiate lucrative agreements, however, companies may not be able to take advantage of potentially significant cost savings.

Many organizations struggle to effectively monitor the availability of state and local tax credit and incentive programs because of the multitude of programs, and requirements that vary by state and locality. Understanding the legislative landscape is crucial in order to maximize state and federal incentive opportunities; failure to correctly interpret practices and policies can result in missed opportunities and, possibly, penalties.

For companies that operate in multiple states, monitoring tax credit and incentive programs is essential to obtain every benefit to which the organization is entitled. As businesses enter new markets, pursue mergers and acquisitions, divest resources, or hire additional staff, having insight into available programs may open the door for tax credits and incentives that can reduce operational costs and improve earnings and cash flow.²

Keeping Track

The array of programs and the various requirements that differ from jurisdiction to jurisdiction make it challenging for companies to track tax credit and incentive programs and related legislative changes. (See the two sidebars accompanying this article that illustrate the diversity of benefits, as well as the steady stream of changes with regard to new and discontinued programs.)

In addition, organizations need to manage their own internal tracking operations to ensure that they secure the right documentation, adhere to deadlines, and are in compliance with each program's particular requirements. Why is the tracking and managing of tax credit and incentive programs so challenging? Consider the following:

Businesses need to navigate a quickly changing landscape.

While every state has some form of income tax, franchise tax, property tax, and/or sales and use tax, laws and rates differ by state. The same is true of the tax credit and incentive structure. For example, federal incentives are available to promote renewable energy and energy efficiency. These types of incentives are also available in many states for corporations that purchase and install eligible renewable energy or energy efficiency equipment, or construct "green" buildings. In some cases, the incentive is based on the amount of energy produced by an eligible facility. Some states allow these tax credits only if the taxpayer has made a specified minimum investment in the eligible project. While the programs may seem similar, the policies and interpretations related to the programs may differ in each jurisdiction.

With hundreds or thousands of state and local credits available, and new and updated programs introduced over time, monitoring available programs can be a daunting task. Many companies fail to take advantage of programs for which they may be eligible because either they are unaware the programs exist, they do not have the resources and skills to put together a program application, or they believe that their business activities do not qualify. Companies that are taking advantage of incentive programs need to stay informed of expiring or expired benefits; moreover, in some cases, the legislature may renew expired credits on a retroactive basis.

In addition to keeping track of what is available and what programs may have been terminated, businesses also need to identify eligibility requirements, job and/or investment commitments needed for continued qualification, audit/reporting standards, and necessary supporting documentation.

Internal information may be difficult to access and track. When it comes to incentives, a company's relevant information is not typically housed in the tax department. Rather, it is often dispersed throughout the organization, thereby requiring additional resources to secure the data from various internal sources.

For example, businesses that hire new employees may qualify for two tax incentives under the federal Hiring Incentives to Restore Employment (HIRE) Act of 2010 (H.R. 2847, 3/18/10; P.L. 111-147). Under this legislation, the business may not have to pay the employer's share of Social Security tax (6.2% of wages) from the date of hire (except for the first calendar quarter of the year) through the end of 2010. In addition, for each newly hired employee who is retained for at least 52 consecutive weeks, the business can qualify for an income tax credit of up to \$1,000. Both tax breaks are available for new employees hired after 2/3/10 and before 2011, who have been unemployed for at least 60 days immediately prior to beginning the new job. Businesses seeking to claim these benefits must have the employees certify by a signed affidavit, under penalties of perjury, that they qualify.

Personnel information, however, is typically stored in the human resources department, not the tax department. Without strong corporate support, individuals may not be properly motivated to capture the information. For instance, a local store's retail manager may also double as the store's hiring manager. The manager may be focused more on selling merchandise than on collecting affidavits from new employees documenting their unemployed status prior to being hired.

Other employment incentive programs may require a commitment to create a specified number of new jobs. In some cases, the employer will need to submit an annual report to the jurisdiction's local economic development office that identifies the number of jobs created, and the quality of those jobs, as reflected in the wages paid, whether the jobs are full-time or part-time, and any benefits provided.

Effective tracking of programs and internal compliance is resource-intensive. Some companies employ their own research staff, but many others simply do not have sufficient resources to manage the tracking, monitoring, and reporting requirements necessary to ensure that the company does not miss out on such opportunities as, e.g., state- or locally funded loan and grant programs. Commercially available reference guides describe state tax credits and legislative updates, but they often miss hard-to-find economic development-related incentives, resulting in incomplete information.

Businesses operating in multiple jurisdictions may engage consultants or attorneys at the local level to track various tax laws and incentives and ensure that the organizations obtain the benefits for which they are eligible. They also may rely heavily on their local operations staff to gain insight into the legal requirements for localized programs. Local staff often has established relationships with government officials, but they may not have the specialized tax or other legal expertise required for tracking these programs. They also may not have the technology infrastructure and rigorous business processes needed for effective tracking.

Organizations that rely on local staff may be unable to capture a holistic view of the programs in which they participate and the cumulative benefits or savings. They also have more vendors to manage. This invites more room for failures and missed opportunities and necessitates additional tracking requirements. If an organization is using multiple providers and handling some of the research internally, it needs to make sure coverage is provided for every jurisdiction in which it operates, understand who is tracking particular information, ensure it is communicated to all appropriate parties, and then track the requirements for the programs.

Receive the Maximum Benefits

Familiarity with state tax credits, grants, incentives, and other benefits is critical in ensuring that a company does not miss opportunities and is able to take full advantage of programs for which it is eligible. Understanding the legislative landscape also provides perspective on the motivation behind particular initiatives. When government or developmental agencies offer a tax credit or other incentive, they do so in order to stimulate a certain type of economic activity.

For example, Minnesota recently enacted legislation (H.F. 2695, 4/1/10; L. 2010, Ch. No. 216) creating a variety of tax incentives to stimulate job growth and economic development in the state. Section 11 of H.F. 2695 establishes a state historic rehabilitation tax credit (codified at Minn. Stat. §290.0681) that mirrors the federal

rehabilitation tax credit in IRC Section 47. Taxpayers may claim a state income tax credit equal to the federal credit, which is 20% of the cost of rehabilitating a "certified historic structure," i.e., a structure listed in the National Register or located in a registered historic district. Projects are eligible for the state credit if they are in Minnesota and are allowed the federal credit. Thirty other states have similar programs for developers and municipalities seeking to rehabilitate historic buildings. Organizations operating in these locations that are not familiar with negotiating tax credits, however, may end up over-committing instead of working in their own best interests. Just because incentives are being offered in a particular state does not mean that every organization will benefit by attempting to take advantage of them.

Consider another example: California has an enterprise zone program under which the state has defined certain criteria for areas that meet the outlined demographic requirements. If expanding in such an area is not going to help a business, however, it should think twice about participating in the program. Instead, companies should look at where they need or plan to grow, and then identify opportunities where state tax incentives can save them money. Consider the following critical points:

Recognize that negotiating is an option. Many state and local governments are eager to negotiate incentives with companies that might revitalize the area's economy. Organizations should take advantage of that, but ensure that they protect themselves. For example, a city might want a company to create, e.g., 500 jobs in five years in order to obtain a particular incentive. Recently, however, the unpredictable economy and recessionary climate have altered the business landscape in ways that might have been unimaginable a few years ago. Without a crystal ball, organizations cannot accurately predict where their businesses will be in five years. If they fail to meet the incentive requirements, they may lose their qualification; if they have already taken incentives, a "clawback" provision might require that the benefits be repaid.³

An organization familiar with the regulations can negotiate effectively, perhaps reaching a deal that triggers benefits at lower thresholds, presenting the state with a range for incremental advancements.

Be proactive and armed with information. Negotiation is an art, and the art of negotiating tax incentives should not be taken lightly. To secure the most beneficial tax credit and incentive packages, companies must understand the types of benefits available and arm themselves with information that enables them to best negotiate with the appropriate governmental agencies. It is important to plan ahead, understand the business goals, and know what resources to bring to the table.

Look at existing tax liabilities and search for applicable programs. Businesses with multistate operations need to implement strategies that minimize the impact of taxation and ensure compliance with tax rules and regulations. Companies should be proactive in understanding whether they have tax liabilities in another jurisdiction, and take steps to minimize or eliminate such liabilities.

Organizations should also undertake a detailed review of all business activities that may reveal unnecessary income tax filings. They may learn that relocating employees or a production facility to a lower-taxing state might result in significant savings.

Consider incentives and credits when making business

decisions. Potential credit and incentive benefits are associated with a variety of business decisions. For instance, building or relocating a facility, adding or upgrading machinery and equipment, restructuring business operations, training new or existing employees, or making other business investments. By being informed about available incentives and credits, organizations can better align and implement growth and operational initiatives with state and local tax strategies.

Other types of incentives may be available to offset the cost of doing business, such as property tax abatements, job training services, sales and use tax refunds, local utility rate reductions, grants and low-interest loans, and other individually negotiated benefits. States seek to promote economic development by providing such financial incentives to assist businesses wishing to locate or expand in their communities. By having insight into the opportunities, organizations can take advantage of such awards.

Doing It Right

To capture all appropriate tax credits, and other federal and state tax incentives, organizations might consider partnering with a tax management service provider with national capabilities. Such a provider offers consistency across multiple jurisdictions, reducing the learning curve that would be required by working with multiple vendors.

A national provider can take a historical perspective, reviewing programs a company may have, for one reason or another, rejected, to determine if there are new opportunities or even if a past benefit still may be claimed (e.g., via an amended tax return). By working with a single provider with a depth and breadth of tax expertise and experience, a business organization can identify these hard-to-find opportunities, develop compelling proposals, and carry negotiations to a successful conclusion.

A tax management service can ensure that a company's growth and operational initiatives align with its state and local tax strategies. The service will have comprehensive, up-to-date information on federal and state tax incentives, enterprise zones, and other federal and state programs, and will have the resources and support to successfully monitor and manage the multijurisdictional agenda.

A partner with experience in negotiating state incentive programs will protect business assets and ensure organizations do not miss opportunities. It will be able to reconcile what programs have already been considered and why the business did not qualify or choose to participate. With technology and processes in place, a tax management service will ensure that all documentation, fees, and other needed material is delivered in compliance and on time.

State and federal tax incentives offer significant savings opportunities. By working with a comprehensive tax management service, and taking a fresh look at programs, hiring trends, and operational initiatives, a business can take a best-practices approach to tracking and monitoring these programs, and claim incentives that will improve the bottom line. **[]**

Sidebar

Incentives Programs Created or Expanded to Stimulate Job Growth

A diverse array of tax credits have been introduced or updated to stimulate job growth. These innovations—some attributable to, some despite, the recent economic downturn—include:

Indiana new employer tax credit. In March 2010, Indiana enacted a new, two-year temporary employer tax credit for corporations to help stimulate job creation. The credit is 10% of the wages paid to qualified employees by a new Indiana business during a 24-month period. All applications must be submitted to the Indiana Economic Development Corporation, the state's lead agency for economic development, prior to 2013. The nonrefundable credit can be carried forward for nine years, but no carryback is available.

TANF state programs.

Several state "Temporary Assistance for Needy Families" (TANF) programs (approved under the federal Social Security Act) are being funded by federal stimulus money from the U.S. Department of Health and Human Services through the TANF Emergency Contingency Fund. Of the \$4 billion in stimulus, any unspent funds are scheduled to expire on 9/30/10. The state programs are intended to provide funds to businesses that hire new workers who are eligible for TANF and, at the same time, help transition people from such state assistance programs into employment. Participating states include Colorado, Florida, Georgia, Illinois, New Jersey, New York, and South Carolina. A few examples of the state programs are as follows:

Florida back to work program. Public and private employers in Florida may receive 95% of the salary costs for new employees. To qualify, the employee must receive wages of at least \$12 an hour. The grants will be awarded based on the job positions needed.

New Jersey return to work program. The New Jersey program offers on-the-job training grants. Employers are reimbursed up to \$5 an hour for up to 12 weeks towards the pay of a newly hired worker to assist with the costs of on-the-job training. The grants are capped at a maximum of \$2,400 per new hire. The employer must pay the new worker at least \$15 an hour and retain the new hire for at least six months. Also, to qualify, any new hire must increase the employer's total employment head count.

South Carolina STEP program. The South Carolina Subsidized Transitional Employment Program (STEP) will reimburse employers for a new employee's wages up to \$7.25 per hour, up to 20 hours per week, for up to six months.

HIRE Act state programs.

Several state programs piggyback the federal Hiring Incentives to Restore Employment (HIRE) Act of 2010 (H.R. 2847, 3/18/10; P.L. 111-147) by targeting the unemployed. The programs are intended to provide funds to businesses that hire individuals who are receiving state assistance.

California TSE program. The Transitional Subsidized Employment (TSE) program assists employers with entry-level labor at no cost for up to 12 months. The program will pay \$10 an hour for up to 40 hours a week. The federal government mandates that all worksites that take on TSE participants contribute at least 20% of the cost of the program in the form of an in-kind contribution, i.e., a service (e.g., training or supervising participants) the value of which is at least 20% of the program cost.

Maryland emergency job creation and recovery tax credit. Businesses operating in Maryland may be entitled to a refundable income tax credit of up to \$5,000 per qualifying employee hired to fill a new position that did not previously exist, or a position that has been vacant for at least six months, with employment beginning after 3/24/10 and before 2011. The credit is prorated for positions filled for less than 12 months. The total credit for a single employer is limited to \$250,000. Qualified employees must be Maryland residents who are receiving unemployment insurance benefits or have exhausted such benefits within the past 12 months and are not employed full time.

Texas back to work. The Texas Back to Work (TBTW) program offers employers up to \$2,000 in wage subsidies for the first 120 days of employment after hiring and retaining qualified job seekers in full-time jobs. TBTW targets employers that hire individuals receiving regular state unemployment insurance benefits, as well as those who have exhausted all such benefits. Another possible incentive would provide employers with up to \$1,500 in wage-retention bonuses if they continue to employ the formerly out-of-work employees for at least 120 days.

Invest New Jersey. This New Jersey initiative is a two-year, two-part program designed to encourage companies to create jobs and make capital investments during the current difficult economic times. The Invest New Jersey program offers in-state businesses a \$3,000 grant for each new full-time job that the business creates and maintains for at least one year. An additional grant is available for up to 7% of new capital investments. The program is scheduled to expire at the end of 2010 but, apparently as a result of the economic downturn, the program exhausted all funds by December 2009 and will not be renewed due to a lack of additional state funds.

Kansas promotes employment. The Promoting Employment Across Kansas (PEAK) program authorizes a diversion of employee payroll withholding taxes to certain qualified companies or third parties that create jobs in Kansas. Under the legislation, a qualified company generally is one that locates a new business facility, office, department, or other operation in Kansas or expands an existing facility, office, department, or other operation in the state, and locates the related jobs in Kansas. The company also must provide its full-time employees with adequate health insurance coverage for which the company pays at least 50% of the premium. In addition, companies that meet certain additional criteria would qualify for withholding tax diversions of 95% for periods ranging from five to ten years, provided that the requisite employees are compensated at a rate equal to at least 100% of the county median wage. In light of current economic conditions, the program was expanded, effective 7/1/10. []

Sidebar

Terminated Incentive Programs

In the realm of state tax credits and incentives, the landscape is constantly changing, with programs being expanded, curtailed, or terminated. The following is a brief description of a few programs that are no longer supported or have been cut back or terminated.

Pennsylvania employment incentive payments credit. This program expired on 12/31/09. It had offered a state tax credit to businesses that hired individuals who (1) had received cash welfare assistance or "Temporary Assistance for Needy Families" (TANF) within the previous 12 months, or (2) were physically or mentally handicapped and were receiving or had received state or federal rehabilitative services.

The credit, which could be claimed against corporate net income tax, personal income tax, insurance premium taxes, and taxes on financial institutions, was based on the first \$9,000 in qualified wages for each eligible employee each year for the first three years of employment, and ranged from 30% in the first year, 20% in the second year, and 10% in the third year.

Maryland employment opportunity tax credit. This program expired on 7/1/09. It offered employers a two-year, nonrefundable income tax credit (30% in year one, 20% in year two) on the first \$6,000 of wages paid each year to "qualified employment opportunity employees." A "qualified employment opportunity employee" was defined as an individual who, for any three months during the 18-month period before employment, was a recipient of temporary cash assistance from the state under the Aid to Families with Dependent Children Program or the Family Investment Program and who, for six months before employment, was a Maryland resident.

Massachusetts full employment program. A business that participates in the Massachusetts Full Employment Program and continues to employ a participating worker for at least one full month after any Full Employment Program subsidy for that worker has expired may claim a credit of \$100 per month of eligible employment per worker. The maximum credit is \$1,200 per eligible employee, and unused credits may be carried over for five years. Eligible workers' and employers' participation must be in accordance with the rules of the Department of Transitional Assistance. The state stopped qualifying individuals for the program, however, due to low participation.

"Green" programs. Many states currently have "green" incentives for companies that build, install, or invest in environmentally and energy-friendly initiatives. The incentives may be in the form of tax credits, exemptions, or abatements, or even cash grants. In light of the current economy, however, state cutbacks and a lack of funds have resulted in some programs being reduced or eliminated.

New York's empire zones. New York offered a variety of tax credits and other incentives for qualified businesses that provided jobs and investment in "Empire Zones," i.e., certain specially designated, economically disadvantaged areas of the state. The empire zone designations expired as of 6/30/10, but the state has replaced that program with the Excelsior Jobs Program, effective 7/1/10. Under the new program, eligible business entities may apply for refundable tax credits in connection with creating jobs and investing in certain industries anywhere in the state.

Federal workforce program. The federal Workforce Investment Act of 1998 (P.L. 105-220, codified at 29 USC §2801 *et seq.*) reformed federal programs for employment, training, adult education, and vocational rehabilitation by creating an integrated "one-stop" system of workforce investment and education services for adults, dislocated workers, and youth. Now, however, funding has been cut in half as a result of the economic downturn. []

END NOTES

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As described on the U.S. Green Building Council website, the USGBC is a Washington, D.C.-based IRC §501(c)(3) nonprofit organization "committed to a prosperous and sustainable future for our nation through cost-efficient and energy-saving green

buildings. USGBC works toward its mission of market transformation through its LEED green building certification program, robust educational offerings, a nationwide network of chapters and affiliates, the annual Greenbuild International Conference & Expo, and advocacy in support of public policy that encourages and enables green buildings and communities." The website also describes the LEED green building certification program as "a voluntary, consensus-based national rating system for buildings designed, constructed and operated for improved environmental and human health performance. LEED addresses all building types and emphasizes state-of-the-art strategies in five areas: sustainable site development, water savings, energy efficiency, materials and resources selection, and indoor environmental quality." For more information, see the USGBC website at www.usgbc.org.

[2](#)

This Journal, of course, has published a variety of articles on various types of incentive programs (e.g., enterprise zones, green initiatives, job creation). For a few recent examples, see Herrera, "State Enterprise Zones: An Update on Income and Franchise Tax Credits (Parts 1 and 2)," 20 JMT 6 (June 2010) and 20 JMT 24 (July 2010); Bowman, "Going 'Green': How States Are Using Tax Incentives to Protect the Environment," 18 JMT 16 (Nov/Dec 2008); Gigerich, "Incentives for Workforce Training: The Ten Best State Programs," 16 JMT 30 (June 2006); Hughes and Hangartner, "Determining 'Employees' for Purposes of Employment-Based Tax Credits and Other Incentives," 15 JMT 6 (August 2005).

[3](#)

See, e.g., Norat and Lomoriello, "Clawbacks: A Help or a Hindrance in Negotiating Incentive Benefits?" 13 JMT 24 (February 2004).

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