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June 2015 Credits and Incentives Update

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This article continues a monthly series outlining updates in state tax credits and incentives; included here are legislative, gubernatorial and case law updates. While tax credits and incentives have their fair share of critics, they are a reality in today's competitive business environment in which states compete with each other for jobs and investment. Regardless of the criticisms, state tax credits and incentives benefit many kinds of entities in a number of different ways.

Tip of the Month:

Given the dire economic situation in many states, we are seeing more states suspend or eliminate certain incentive programs. Some states are implementing caps or restrictions on incentive programs. Taking such actions to mitigate financial stress, however, could lead to conflict and litigation. For example, some states with better fiscal health are leveraging their incentive programs against those states that are capping or eliminating incentive programs in order to entice taxpayers and businesses to move. In addition, potential litigation looms as interested parties or trade organizations threaten law suits under constitutional causes of action.

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Recent Announcements of Credit/Incentives Applications and Packages

Alabama: In exchange for building a new $600 million data center in Jackson County, Google has received several large incentives from Alabama. The state will give Google an investment tax credit of $50 million over the next 10 years. In addition, Google will also receive a $20 million dollar abatement for state non-educational sales tax, and an $11.8 million abatement for non-education state property tax. The Alabama Department of Commerce ("ADC") says Google could have an estimated $109 million dollar economic impact on the state over the next 10 years. Alabama media outlets are reporting that Google's tax incentive package won't be coming out of the state budget because the ADC estimates that Google could bring in over $100 million to the state's economy over the next 10 years.

California: The California Competes Tax Credit Committee on June 18, approved $15 million in tax credits for Tesla Motors Inc., which plans to invest billions of dollars to expand its operations in the state. Tesla has promised to hire 4,426 full-time employees and expand its existing operations in the cities of Fremont, Palo Alto, Lathrop, and Hawthorne. Tesla has been subject to scrutiny in the press over its tax credits and government support. Purchasers of Tesla vehicles receive substantial tax credits, including a $7,500 federal income tax credit.

Including the approval of the credits for Tesla, the California Competes Tax Credit committee approved a total $49.8 million in credits for 63 companies that are expanding or creating jobs in California; the companies will create a projected 11,340 jobs and generate over $3.4 billion in investment.

On June 2, 2015, the California Film Commission announced the list of 11 projects selected to receive tax credits under the first allocation of the state's new Film and Television Tax Credit Program 2.0, which expands program funding from $100 million to $330 million annually.

Iowa: On June 20, 2015, an Iowa fertilizer manufacturer was awarded $21.5 million in investment tax credits and

$3.5 million in sales tax refunds in exchange for a promise to make new investments of about $500 million and to generate 11 new jobs. At a rate of $2.27 million per job, the incentives may be among the most lucrative any state has handed out for economic development purposes.

Michigan: Under a revised agreement with the Ford Motor Co., the Michigan Strategic Fund (MSF) has capped the company's previously authorized job retention tax credits at $2.3 billion through 2025. The resolution, approved June 8 by the MSF, amends the automaker's Michigan Economic Growth Authority (MEGA) tax credits and calls for Ford to provide periodic forecasts of its estimated tax credits in order to assist Michigan's budget planning process.

The agreement calls for Ford to spend an additional $3.1 billion on Michigan facilities through 2025-double the capital investment commitment made to initiate the MEGA tax credits. To remain eligible for the tax credits, Ford must retain 40,200 jobs, a figure representing more than 91% of its in-state workforce.

Governor Snyder said in a statement June 8 that the agreement caps the state's liability for previously authorized job retention tax credits while providing incentives for Ford to double its future investment in Michigan.Why the renegotiation?After Michigan was hit with a surprise surge in tax refunds last fall, Snyder said his administration began working to achieve budgetary certainty by opening revision talks with companies eligible for tax credits through 2031. Ford is the first to come to terms with the state on this issue, the Governor said.

New Jersey: On June 9, 2015, the New Jersey Economic Development Authority (EDA) board indicated that it would offer $164.2 million in tax credits for 10 years to a Voorhees, N.J.-based water utility, American Water Works Company, Inc., if it agrees to keep existing jobs in the state and build its new headquarters in Camden. The New Jersey EDA approved the potential tax breaks for American Water, in exchange for consolidating 596 jobs from five existing offices into a newly constructed 250,000 square-foot facility in Camden, one of the state's most distressed municipalities. American Water has still not made a final decision but is "very pleased" with the outcome of the EDA board meeting.

In addition to the American Water project, the EDA's board on June 9, also approved a $16 million credit over 10 years for a Manhattan-based jewelry manufacturer, Frederick Goldman, Inc., to move to Secaucus, N.J., instead of New York; and $27.6 million credit over 10 years to entice a wholly-owned subsidiary of Serta Simmons Bedding, SSB Manufacturing company, to create a manufacturing facility in Carteret, N.J., rather than expanding its existing facility in Pennsylvania.

State Elimination or Suspension of Programs

Alaska: On June 16, 2015, Governor Walker announced that he signed SB 39 into law, ending the state's film production incentive program. The Governor stated that "I have been, and remain, a strong supporter of the film industry in Alaska. However, we are now facing unprecedented financial times. As we prepare to lay off troopers and close at least two trooper stations, it is difficult to justify continuing this program. The film tax credit program is already set to sunset in 2018 and we just don't see oil prices bouncing back before then." Since 2009, the state has paid approximately $9 million per year in film tax credits.

Illinois: On May 31, 2015, Governor Rauner announced the immediate suspension of all future business attraction and retention incentives, the deferring of film tax credit and high impact business designation approvals, and other administrative measures to cut spending as a result of the state's nearly $4 billion budget deficit for fiscal 2016.

A group of nine companies are using EDGE to keep their employees' withholdings instead of forwarding the money to the state. That special deal, which requires legislative approval, has been on a "de facto" moratorium after at least a half-dozen companies, including agriculture giant Archer Daniels Midland, sought it in 2013. Rauner's office said all previous commitments will be honored.

Legislative, Regulative and Gubernatorial Update

Colorado: Colorado Governor Hickenlooper on June 5, signed bills that expand the state's job growth incentive tax credit and limit the state's losses from the enterprise zone investment tax credit.

HB 1366 allows businesses that partner with state colleges and universities to qualify for the job growth credit. The program already allows a credit to firms that create jobs in the aerospace, clean energy, technology, tourism, film, and information technology industries. The credit is worth half the amount the employer pays in Social Security and Medicare taxes for each job created. HB 1366 allows any employer to qualify under the lowest standard -- creating five jobs with at least the county average salary and retaining them for a year -- by entering into a qualifying partnership with a state college or university.

HB 1219 allows certified recipients of the enterprise zone investment tax credit who place a renewable energy project in an enterprise zone to waive 20% of the value of the credit in exchange for the option of having the remaining 80% -- up to $750,000 annually -- refunded.

SB 26 increases the income tax credit for the first $100,000 of donated conservation easement to 75%, up from 50%.

Florida: Florida HB 33A as signed into law on June 16, 2015, among other things increases the aggregate amount of credits available for voluntary brownfield cleanups and rehabilitations, raising it to $21.6 million in fiscal 2016 and letting it revert to $5 million thereafter.

In TIP No. 15ADM-03 released on June 18, 2015, the Florida Department of Revenue announced that the community contribution tax credit against sales and use tax, corporate income tax, or insurance premium tax has been extended through June 30, 2018, and has been expanded to include donations made to provide housing opportunities for persons with special needs.

Indiana: The Indiana Regional Cities Initiative was signed into law on May 7, 2015. It enables the state to be a financial partner with regions that develop compelling strategic plans facilitating significant investment that transforms Indiana communities into destinations for talent.

House Enrolled Act 1403 creates the Indiana Regional City Fund to be administered by the Indiana Economic Development Corporation (IEDC). 1403 includes criteria for the IEDC board to consider when reviewing application such as (1) which projects have the greatest economic development potential, (2) the degree of regional collaboration, and (3) the level of state financial commitment and potential return on investment. 1403 requires that applicants be regional development authorities and expands the permissible units that may establish a development authority.

House Enrolled Act 1001 establishes the Indiana Regional Cities Development Fund which provides the IEDC with the authority to spend $84M for the Regional Cities Initiative. 1001 also authorizes the Department of Revenue to conduct a Tax Amnesty Program and directs that the first $84M of the revenue generated through the tax amnesty program be deposited into the Indiana Regional Cities Development Fund.

Iowa: Governor Branstad signed legislation (H.F. 645, enacted June 26, 2015) that expands the state's solar energy tax credit for this year and next. The bill, which took effect upon its signing, continues to base the state credit on the federal tax credit. Carry-over from the credit can continue for the 10 years following the credit's expiration in 2016. Previously, the credit was equal to 60% of the federal solar energy tax credit and capped at $4.5 million in credits statewide per year. H.F. 645 reduces the state credit to 50% of the federal credit but expands the cap to $5 million per year. The expanded cap will take effect this year, while the reduced credit will apply to solar energy systems installed after January 1, 2016.

On June 22, 2015, Governor Branstad approved legislation to spur the development of high-speed broadband infrastructure in the state. HF 655 offers companies a 10-year property tax exemption equal to the value of broadband infrastructure installed after certification by a local assessor. The infrastructure must provide Internet access at download speeds of at least 25 megabits per second and upload speeds of three megabits per second, and it must be installed in an area where such speeds are not already available.

Louisiana: Louisiana HB 829, signed into law as Act 134, caps the motion picture investment tax credit program at $180 million for fiscal 2016 through 2018, limits single projects to no more than $30 million in credits, and lowers the motion picture project spending threshold from $300,000 to $50,000.

On June 19, 2015, Act 125 (HB 129) was signed into law which reduces many income and corporation franchise tax credits and incentives, including but not limited to the new jobs credit, insurance company premium credit, angel investor credit, tax credit for "green job industries," and neighborhood assistance credit by 28%. The reductions are applicable when claimed on any return filed on or after July 1, 2015, but before June 30, 2018, regardless of the taxable year to which the return relates with certain specific exceptions. In addition, any reductions made pursuant to Act 125 are prohibited from being added to any carry forward provision allowed by law with a few exceptions. For additional guidance as to all of the credits that are affected, check out Louisiana Revenue Information Bulletin No. 015-021.

Louisiana HB 779, signed into law as Act 131, lowers the maximum sales tax credit for thermal energy systems to the lesser of $2 per kilowatt, 50% of the cost of the system, or $10,000 per system.

Louisiana SB 93, signed into law as Act 140 on June 19, 2015, creates the Student Assessment for a Valuable Education (SAVE) program to facilitate higher education funding and prohibits the $25 educational expense credit for each child attending nonpublic elementary and secondary school if the tuition expense deduction has already been taken.

Each student assessed is granted a SAVE credit against individual income, sales and use, gasoline, and special fuels taxes equal to the individual amount of a SAVE assessment. The amount of each credit shall not exceed the average household tax liability in Louisiana for the total of the following: individual income, sales and use, gasoline, and special fuels taxes as determined and published by the Department of Revenue no later than June thirtieth of each fiscal year. The aggregate amount of SAVE credits granted in any fiscal year shall not exceed three hundred fifty million dollars.

Louisiana HB 244, signed into law as Act 104 on June 19, 2015, extends the sunset of the angel investor tax credit program by two years to July 1, 2017.

Missouri: Missouri SB 194 as signed into law on June 22, extends the date an employee-owned business that is building a new facility or expanding an existing facility must commence or expand operations to January 1, 2025 (previously January 1, 2020), in order to qualify for the business facility tax credit.

Nevada: Nevada SB 170, signed into law as Chapter 498, allows a partial abatement of personal property and sales taxes for persons who intend to locate or expand a data center in Nevada; a partial abatement of up to 10 years may be granted for investments of at least $25 million and up to 20 years for investments of at least $100 million.

Nevada AB 161, signed into law as Chapter 406, allows property and sales tax abatements for the taxable aircraft or aircraft components of a qualifying business that owns, operates, manufactures, repairs, or assembles aircraft or aircraft components. New businesses must have five or more full-time employees to qualify for the abatements, and existing businesses must have the greater of an increase of 3 percent in new employees or three new employees to qualify.

New Mexico: Governor Martinez on June 15, signed legislation, H.B. 2, aimed at providing tax incentives and job stimulus to New Mexico's economy. The new measure was agreed to by a bipartisan group of lawmakers in a one-day special session of New Mexico's Legislature that adjourned on June 8. Among the expected beneficiaries are corporations that build headquarters in New Mexico, military contractors involved in directed-energy and satellite-related research, technology companies doing research and development and certain investors in business startups.

According to a bill summary prepared by legislative staff, the new law's provisions include the following:

- It restores the gross receipts tax deduction for trade-support companies that first locate within a 20-mile U.S.-Mexico border zone from Jan. 1, 2016, through Dec. 31, 2020;
- The new law creates a new section of the Gross Receipts and Compensating Tax Act to make deductible through Dec. 31, 2020, the receipts from the sale by a qualified contractor of qualified research and development services and qualified directed energy and satellite-related inputs sold pursuant to a contract with the U.S. Department of Defense;
- It increases the annual amount of New Mexico "Angel" investment credits that can be issued to an aggregate $2 million, and eliminates some restrictions on the type and number of investments that can be made and still be eligible for the Angel credits. The credits provide seed funding for small businesses; and,
- The new law also expands the Technology Jobs Tax Credit and names it the Technology Jobs and Research and Development Tax Credit Act. Both R&D and Angel investment credits work out of the Air Force Research Laboratory in Albuquerque, N.M.

New York: Governor Cuomo signed a bill (S. 6012, enacted 6/26/15) to extend a tax abatement program for housing developers in New York City and create a new personal income tax credit for homeowners outside of the city. The new law will also extend the state's 2011 property tax cap law until 2020. The tax abatement program for New York City developers, which is known as 421-a, provides about $1 billion in partial real property tax abatements to developers to encourage building affordable housing. The law will extend the program for five years but is predicated on developers and organized labor reaching an agreement on prevailing wages. If no agreement is reached, the law would expire in seven months.

In June, the New York City Economic Development Corporation ("NYCIDA") provided guidelines on the eligibility requirements for small businesses to obtain and use up to $100,000 in sales tax exemptions through the Accelerated Sales Tax Exemption Program. This Program helps remove some of the barriers small businesses face trying to complete equipment upgrades or renovations. Through an application process, approved businesses will be eligible for up to $100,000 in sales tax exemptions for the purchase, installation and maintenance of construction materials, equipment and furnishings.

All NYCIDA benefits are discretionary. To convey the benefits, approved companies must satisfy all application requirements, including providing proof of insurance coverage (in form acceptable to NYCIDA), executing a lease and benefits agreement pertaining to the approved project activities, and providing due diligence and other background information acceptable to NYCIDA.

North Carolina: The Republican leaders of the North Carolina Senate on June 10 unveiled an extensive tax package that would continue many of the reforms the state put in place in 2013. The $2 billion package, contained in revisions to HB 117, would among other things extend the Jobs Development Investment Grants (JDIG) program for two more years and provide an additional $5 million in funding. It would establish a new tax incentive for major manufacturing, such as aerospace and automobiles manufacturing, in exchange for a commitment to invest at least $750 million and create at least 2,000 new jobs.

In a bow to the governor, a former mayor of Charlotte, the package would eliminate a provision in previous bills that put a hard cap on incentives granted to projects in urban counties.

Ohio: Language added to the 4,000-page budget bill (HB 64) that just passed the Ohio Senate would put a moratorium on the Ohio historic preservation tax credit for at least two years. The proposed moratorium would take effect July 1.

Oregon: The Oregon House Revenue Committee approved an amended bill SB 925 on June 23, that would modify and extend a number of tax credits that mostly benefit low-income taxpayers; the bill includes several tax increases that would partially offset the cost of extending the credits. The bill will now go to the full House for a floor vote.

The measure would combine the existing working family child care tax credit and the child and dependent care tax credit into a single working family and dependent caretax credit, starting in tax year 2016. It would also increase the earned income tax credit from 8% to 14% of the federal credits for taxpayers with dependents under the age of two.

The bill would also extend the sunset date for several tax credits, including: (1) the film tax credit, which would sunset on January 1, 2020; (2) the long-term care insurance tax credit, which would retroactively sunset on January 1, 2015; and (3) the rural medical providers tax credit, which would sunset on January 1, 2018.

Oregon HB 2690 as signed into law on June 20, 2015, provides a property tax exemption for land held by a nonprofit corporation for the purpose of building residences to be sold to individuals whose income is less than 80% of the area median income.

Rhode Island: In ADV 2015-12, the Rhode Island Division of Taxation issued a notice reminding taxpayers of tax changes that take effect July 1. Specifically, the notice reminds taxpayers that no new tax credits under the Rhode Island Distressed Areas Economic Revitalization Act ("enterprise zone" tax credits) can be issued on or after July 1, 2015, unless the business has received certification prior to July 1, 2015.

On the other hand, several tax credits and incentives take effect on July 1, that are intended to spur job creation. Among the highlights:

1. The "Rebuild Rhode Island Tax Credit" program is intended to encourage the development of commercial projects. In general, the maximum tax credit will be 20% of a project's cost, although -- under certain circumstances -- an applicant can be eligible for additional tax credits of up to 10% of the project cost. The maximum credit will be $15 million per project. A tax increment financing (TIF) program is established to stimulate business development; retain and attract business and industry; create jobs; help with business, commercial, and industrial real estate development; and generate revenue. Under the program, the Division of Taxation will pay to a developer the incremental state revenues directly realized from projects or businesses operating in a qualifying TIF area.

2. The "Stay Invested in RI Wavemaker Fellowship" program is established to expand employment opportunities in the state and to retain talented individuals in the state by providing tax credits related to education loan repayment expenses to applicants who meet eligibility requirements. Tax credits may reach as high as $1,000 for an associate's degree holder, $4,000 for a bachelor's degree holder, and $6,000 for a graduate degree holder.

3. The "Anchor Institution Tax Credit" program is established to attract businesses to locate in Rhode Island and to give existing Rhode Island businesses an incentive to encourage businesses in their supply chain, service providers, or customers to relocate to Rhode Island.

4. The "New Qualified Jobs Incentive" program generally provides a qualifying business with a tax credit whose base amount is up to $2,500 a year for each new full-time job, although the credit can rise to $7,500 a year if the business meets certain criteria. The new law also requires that certain new tax

credit/incentive programs be included in the state's systematic and comprehensive analysis of economic development tax incentives as spelled out in statute.

Finally, the corporate tax rate reduction program, known as the Jobs Development Act (Rhode Island General Laws Chapter 42-64.5), is discontinued effective July 1, 2015. However, any company that has qualified for a rate reduction under the Jobs Development Act program prior to July 1, 2015, will be entitled to maintain the rate reduction that was in effect as of June 30, 2015 (no additional rate reduction will be permitted).

Vermont: Vermont S 138 as signed into law lowers wage requirements for job incentives and sets a $10 million annual cap, allows tax exemptions for out-of-state businesses engaged in disaster relief, and creates an employee relocation tax credit study committee among other things.

Washington: Washington SB 5761, signed into law as Chapter 9, allows a property tax exemption for the value of new construction of industrial or manufacturing facilities in targeted urban areas.

On June 22, 2015, the Washington Department of Revenue announced that the commute trip reduction (CTR) tax credit program has been extended for two years to June 30, 2017. Employers can give CTR incentives to or on behalf of their own or other employees. Employers can then be eligible for a CTR credit against business and occupation (B&O) or public utility tax (PUT) liability. Employees qualify for CTR incentives if they participate in ride sharing, public transportation, car sharing, and non-motorized commuting. The credit is equal to 50% of the incentives paid by employers. However, the amount is limited to $60 per employee per year. An employer can't receive more than $200,000 of credit per fiscal year. This cap doesn't apply to credits carried over from prior years. An employer needs to apply with the state the following January for a credit. The credit is based on the incentives paid by the employer in the prior calendar year.

States' Evaluation and Review of Credit and Incentive Programs

Louisiana: In June, the Louisiana Legislative Auditor released the report of its audit to determine if state agencies that administer tax incentives are complying with reporting requirements of Act 191 of 2013, finding that the Legislature received information on five of the 79 incentives because only half of the agencies submitted reports by the act's deadline.

New Jersey: Just one month after legislation was introduced to reform the state's business tax incentive programs, the bill was withdraw on June 11 by its sponsors claiming that it was no longer needed.What was the reason? Just a few weeks after the bill was announced, Rutgers University and the New Jersey Economic Development Authority announced a partnership to evaluate the effectiveness of two of the state's business tax incentives programs -- the Grow New Jersey Assistance Program and the Economic Development and Growth Program.

Texas: Governor Abbott on June 18 signed a bill making Texas the sixth state to pass a law in the 2015 legislative session to require the evaluation of the tax incentives handed out in the name of economic development. The Texas law calls for the formation of a nine-member economic oversight board. The board will develop a schedule for periodic review of each tax incentive, cash grant, and loan awarded in the state. The board is charged with developing performance indicators to determine whether incentives are achieving their goals. In addition, the board will make recommendations to the Legislature about each incentive, on whether it should be continued, and if so, how it could be improved. The board can also recommend that the state auditor study an incentive to obtain more information. The law also requires a comprehensive report to be publishedevery two years.

Interesting Updates

California: How does a business remain the happiest place on earth?Seek a long extension to your tax-incentive agreement. In July, city leaders in Anaheim, California will consider renewing a soon-to-expire tax agreement with The Walt Disney Co. in light of the company's proposal to invest $1 billion into its Disneyland Resort, the city's marquee attraction.

According to the city, the company is preparing a major expansion at Disneyland. Meanwhile, a 20-year agreement with the city to protect the theme park from an entertainment tax is set to expire this year. The park is pushing for a 30-year extension of that agreement, with an additional 15-year extension option, in return for the added investment.

The proposal would allow for the park to be reimbursed by the city if an entertainment tax is created, according to a city news release. Anaheim is not considering an entertainment tax at present, but Disney wants assurances long into the future. Under the new agreement, Disney would have to complete its investment by the end of 2024.

Illinois: Illinois Governor Rauner's move to defer action on any new applications for Illinois' film tax credit is showing signs of playing well-in other states. For example a New Jersey-based consultant who works with movie and TV producers, sent an email to clients and studio executives earlier this week reviewing "alternate options" to Illinois. The consultant stated that "In view of the recent press release" from Rauner announcing the decision, "our team would like to share some of our favorite state incentive programs for film and commercial production..."

Louisiana: As outlined above, Louisiana HB 829, signed into law as Act 134, provides several limitations to the motion picture investment tax credit program including installation of a cap at $180 million for fiscal 2016 through 2018. The Louisiana Film Entertainment Association indicated that it will challenge the legislation in court as it is "too potentially catastrophic to the industry and, frankly, to the state of Louisiana." According to the Association, the law violates the equal protection and takings clauses of the U.S. Constitution because even if a company can get certification for the credit, the annual cap limit would apply retroactively to the claiming of the credit. So, some would have their credits honored and others would not.

"The taxpayers who don't have their credits honored because the cap has been reached will then have to come up with the cash needed to pay their tax liability, they'll have to pay penalties for making that payment late, and they'll have to pay interest until the time that the tax is ultimately paid," according to as Association representative. As a result, this would lead to a disparate treatment of two similarly situated taxpayers -- in violation of the equal protection clause -- and that it would amount to the government devaluing the credits after the cap has been reached, which could be considered a taking.

Ohio: As outlined above, language added to the 4,000-page budget bill (HB 64) that just passed the Ohio Senate would put a moratorium on the Ohio historic preservation tax credit for at least two years. Some are claiming that this provision would affect current redevelopment projects worth hundreds of millions of dollars. Representatives of developers, property owners, and historic preservation organizations say the bill would preventthemfrom receiving the credit for projects already underway because certificates for the credits are issued only for qualified rehabilitation expenditures that have already been paid.

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