Everything’s Bigger in Texas
Overview of Texas Credits and Incentives

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June 7, 2016
Credits and Incentives Overview
Types of Credits and Incentives

- **Tax Credits**
  - Statutory (“as of right”) tax credits (most common)
  - Negotiated credits (e.g., CA Competes)
  - Quasi-negotiated credits (e.g., NY Excelsior)

- **Negotiated Incentives**
  - State or local programs that provide discretionary benefits
  - Must generally apply before committing to site
  - Many forms (e.g., cash grants, property tax abatements, sales tax exemptions, many others)
Types of Tax Credits

- Jobs Tax Credits
- Investment Tax Credits
- Hybrid Jobs and Investment Tax Credits
- R&D Tax Credits
- Port Tax Credits
- Targeted Credits
  - Green Credits (e.g., high-efficiency buildings, hybrid vehicles, recycling, telecommuting)
  - Film Tax Credits
  - Credits for specific industries (e.g., manufacturing, high-tech, life sciences)
Tax Credits: Jobs Tax Credits

- Jobs Tax Credits
  - Credit for creating and maintaining new, full-time jobs
  - Amount is per job, often over a several-year period
  - May be tied to other factors:
    - High wages
    - Location (benefits can vary by county or tier)
    - Type of job (full-time, permanent, state residents)
  - May be allowed against withholding or sales/use tax
  - Definition of qualifying job important
Tax Credits: Investment Tax Credits

- **Investment Tax Credits**
  - Credit measured by percentage of qualifying investment
  - Credit percentage may vary by location (e.g., GA)
  - Increased percentages for certain types of property (e.g., pollution control)
  - Definition of qualifying investment important
Tax Structure “Incentives”

- **Sales tax exemptions**
  - Manufacturing equipment
  - Data center or other computing equipment
  - Distribution center equipment

- **State income tax apportionment**
  - Single sales factor apportionment formula

- **Property tax**
  - Imposition of ad valorem tax on personal property
  - Freeport exemption for inventory
Negotiated Incentives

- Most jurisdictions have authority to negotiate incentive packages
- Negotiated incentives may include:
  - Cash grants
  - Property tax reductions
    - Real and/or personal property taxes
    - Abatement, rebate, tax increment financing, bond sale/leasebacks, etc.
  - Sales and use tax exemptions or refunds
  - Utility incentives (rate reductions, efficiency incentives)
  - Infrastructure grants (roads, utilities, etc.)
  - Job training or recruitment (cost-free or reimbursable)
  - Local fee waivers
  - Expedited permitting
Incentives Process

- **When to start**
  - Earlier involvement in site selection process is better
  - Who “owns” the incentives negotiation?
  - Coordination with internal stakeholders – real estate/ops/tax/policy
    - Estimated job creation and capital investment, and timing of each
    - Project timeline

- **Due diligence**
  - Available programs
    - Which programs best match project’s needs?
  - Terms and conditions to qualify
    - Sample agreements
  - Comparable deals
Incentives Process (cont.)

- Working with state and/or local authorities
  - Economic development, chamber of commerce, department of community affairs, state tax commissioner, governor’s office
    - Know role of each authority
    - State, local, or both
  - Initial contact can be anonymous
  - Presentation matters!

- Offer letter/official approvals
  - Timing is critical

- Public announcement
Incentives Process (cont.)

- Careful consideration must be given to incentives accepted
  - Be conservative with jobs and investment commitments
  - Pay attention to the agreements – remember, it’s negotiable!
  - Other strings?
    - Prevailing wage, M/WBE, green building requirements
- Clawback provisions
  - Negotiate up front
  - Beware of 100% clawback provisions
- Exclusivity – claiming some incentives may rule out others
Securing State Tax Credits

- Do your diligence – understand parameters of available credits and whether you qualify
  - Statutes, regulations, rulings, case law
    - How are key terms defined? Read the small print
  - Advance approval requirements
  - Involvement of multiple project legal entities
  - Clawback requirements
  - Tax credits are audited as part of the corporate income tax audit
    - DOR will hold you to statutory/regulatory rules, regardless of what the Department of Commerce promised
    - Letter rulings?
Transparency Developments

- **GASB Statement No. 77**
  - New financial reporting disclosure requirements for negotiated tax abatements granted by state and local governments
    - Description of abatement program, including tax being abated, authority for abatement, eligibility criteria, abatement mechanism, recapture provisions, and types of commitments made by recipients
    - Gross value of all abatements
      - Individual recipient disclosure is not required
  - Effective for reporting periods beginning after Dec. 15, 2015

- **FASB Topic 832**
  - Proposed new financial reporting disclosure requirements for negotiated incentives received by companies
    - Description of material negotiated incentives, how benefits are included in financial statements, terms and conditions of agreements, value of benefits received but not recognized (e.g., tax abatements)
  - Discussion draft issued on Nov. 12, 2015
    - After public comments, FASB decided on May 5, 2016, to begin “redeliberations” about disclosure requirements
Texas Credits and Incentives
Available Texas Incentives

**Discretionary Cash Grants and Loans**
- Texas Enterprise Fund
- Skills Development Fund
- Self-Sufficiency Fund
- Texas Product/Business Funds
- Texas Leverage Fund
- Moving Image Industry Incentive Program
- Texas Capital Fund Infrastructure Program
- Texas Capital Fund Real Estate Development Program
- Defense Economic Adjustment Assistance Grant Program
- Texas Military Value Revolving Loan Fund
- Economic Development and Diversification
- In-State Tuition

**State Statutory Credits and Incentives**
- Large Data Center Incentive
- State Sales and Use Tax Exemptions
- Franchise Tax Deduction for Business Relocation
- Severance/Production Tax Incentives
- Research and Development Tax Credit
- Ad Valorem/Property Tax Exemption
- Renewable Energy Incentives
- Freeport Exemption

**Local Negotiated Incentives**
- Texas Enterprise Zone Program
- Chapter 380/381
- Local Type A and B Grants
- Property Tax Abatement
- Tax Increment Financing
- Reinvestment Zones
- Texas Economic Development Act
Texas Incentive Spending? (per NYT)

Texas
Texas spends at least **$19.1 billion** per year on incentive programs, according to the most recent data available. That is roughly:

- **$759** per capita
- **51¢** per dollar of state budget

Top Incentives by type
- **$14.9 billion** in *Sales tax refund, exemptions or other sales tax discounts*
- **$3.27 billion** in *Property tax abatement*
- **$743 million** in *Corporate income tax credit, rebate or reduction*

Top Incentives by industry
- **$11.7 billion** in *Manufacturing*
- **$2.79 billion** in *Agriculture*
- **$77.3 million** in *Health care*

Texas Enterprise Fund

- Cash grant to business considering locating in Texas
  - Award generally ranges from $2,000 to $10,000 per job
  - More than $577 million awarded in FY2014 and 2015 to 17 companies
  - 2015 budget was $120 million; 2016 reduced to $90 million

- Requirements
  - Interstate competition
  - Significant projected job creation, rate of return, capital investment
    - Generally, >75 new jobs in urban areas, >25 new jobs in rural areas
  - At or above average county wages
  - Local government(s) must also offer incentives
  - Approval of Governor, Lieutenant Governor, and Speaker of the House
Chapter 380 – Cities
- Municipalities may establish a program that offers incentives—loans and grants of city funds—to promote economic development, such as commercial and retail projects

Chapter 381 – Counties
- Counties may administer and develop a program that offers incentives—loans and grants of county funds—to encourage business location and commercial activity in the county
Program specifics vary widely by jurisdiction

Types of incentives may include:
- Property tax rebate
- Sales tax rebate
- Financing for construction, purchase of real estate, etc.
- Use of city personnel, equipment, or facilities
Tex. Local Gov’t Code Chapters 380/381 (cont.)

- Common requirements
  - Job creation
  - Capital investment
  - Continued operations
  - Reporting
  - Community input

- Requires public approval(s) agreement with local government(s)
  - Often involves multiple local governments
Agreement by taxing unit (county, city, or special district) to exempt from property tax all or part of the increased value of real or tangible personal property
- Period of up to 10 years

Requirements
- Governing body adopts guidelines/criteria and resolution to participate under Chapter 312
- Property located in a Reinvestment Zone (or Enterprise Zone)
- Property owner/lessee must make significant improvements or repairs
- May also require job creation
- School districts cannot participate
Agreement by school district to limit the taxable property value of real and personal property for school district maintenance and operations tax (M&O) purposes
- Period of up to 10 years
- Only available for limited types of projects

Requirements
- Property must be used in certain qualifying zones and in certain qualifying activities: manufacturing, R&D, certain clean energy projects, computer centers
- Job creation and minimum wage requirements vary by school district
- Minimum investment varies by school district (between $1 million and $100 million)
Texas Enterprise Zone Program

- Refund of state sales and use tax (6.25%) on qualified expenditures over five years
  - Amount of refund depends on capital investment and number of new jobs created
    - Refund up to $312,000 for capex of $1 million to $5 million and 125 jobs
    - Refund up to $1.25 million for capex of $5 million to $150 million and 500 jobs
    - Larger refunds for larger projects

- Requirements
  - Must meet investment and job requirements (above)
  - Wages must exceed county average wage
  - Can be located “inside or outside” of an EZ
    - If inside an EZ, at least 25% of jobs must meet EZ requirements (low income, EZ residence, veterans)
    - If outside an EZ, at least 35% of jobs must meet EZ requirements
  - Local government must support designation and offer incentives
Data Center Sales Tax Exemptions

- Exemption for equipment, software, and electricity

- New “large” data center exemption
  - Exemption from both state and local sales tax
  - Requirements:
    - At least 250,000 sq. ft.
    - Create at least 40 permanent jobs, paying at least 120% of county average weekly wage
    - Invest at least $500 million over five years
    - Contract for at least 20-MW electric transmission capacity
Questions?

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