

Tax Incentives Alert

Strategies In Action • Tax-Saving Opportunities • Real-World Insights

www.straffordpub.com/tax

Inside

TIA DIGEST	2-4
Both tax credits and the Michigan agency issuing them axed by reform bill	
COMPANIES IN THIS ISSUE	2
HOUSING CREDIT WORKS	3
Report lauds federal credit program for performing on all statistical benchmarks	
STATES RAPPED	4
Report card finds few states deserve high marks for jobs, wage standards	
FEDERAL INCENTIVES	6-7
Our scorecards gives terms of federal business credits, exemptions and deductions	
FEDERAL ROUNDUP	8
Latest opportunities in incentives from agencies, Congress, federal courts	
STATE-BY-STATE	9-11
Developments of interest at the state level that involve tax incentives	
TAX EXECUTIVE FORUM	12
Tax pros weigh in on the deals consulting firms seek to administer tax credits	

Heads Up

Long-awaited rules are issued on how development offices certify low-income businesses, for new markets credits.

For more on these and other key developments involving federal tax incentives, turn to **p. 8**.



Full texts of tax documents—
Free to TIA subscribers.
www.straffordpub.com/sptaxlink

Don't Treat Research Credit Study As A Turnkey Job For Consultant

Demand frequent performance reports from the firm, and check work closely

Suppose your tax department has decided it doesn't have the time to perform a credit study for the federal research and experimentation (R&E) tax credit in-house; the resources simply aren't available. Just remember; corporate tax execs can't just kick up their heels at that point. Careful monitoring and management of the study remains a best practice, consultant or no.

Credit studies are undertaken to identify qualifying expenses under IRS regulations, in order to streamline the process particularly for companies that haven't claimed the R&E credit before or in several years, or hope to claim it for new processes. A study typically requires interviews with the company's scientists, analysts and engineers who conducted the research, and an exacting review of research records.

Val Nielsen, VP and director of corporate taxation at **J.R. Simplot Co./Boise, Idaho**,

found that bringing in one of the many consulting firms that take on research credit studies still required direct participation of his tax staff.

"Our consultants don't do anything without our people being directly involved," he told *TIA*. J.R. Simplot opted to outsource the study because Nielsen felt his team might be missing qualifying expenditures; in fact, he sees the hiring of an outside firm as "really an education opportunity for us in trying to tweak our own process."

Company tax staffers sit in on all interviews and discussions between the consultants and in-house engineers and researchers, to learn from the advisors' expertise. In addition to the free education, that monitoring has encouraged company employees to drop their reticence and

RESEARCH CREDIT STUDY continues on **PAGE 5**

Taxpayers Hope IC-DISC Incentive Survives, Leverage Its Benefits

Exporters must master intricacies of new entities, pricing rules, etc.

U.S. companies that export their products are among a number of affected taxpayer groups waiting on congressional extensions of the interest charge-domestic international sales corporation (IC-DISC) federal incentive, which is slated to expire on Dec. 31, 2012.

Under the current Internal Revenue Code, companies can opt for an IC-DISC structure in order to have 50% of export income taxed at the dividend rate of 15%, as opposed to a top income tax rate of 35%.

However, the participation mechanism is far from simple. A separate entity – the "corporation" part of an IC-DISC – must be established, and the exporting company then pays deductible commissions to it. The deemed or actual dividend payment is taxed to the exporter's shareholders or partners at the 15% rate.

In a practical sense, an IC-DISC appeals primarily to closely held companies, said

Neal Block, a senior counsel with **Baker & McKenzie** in Chicago.

"Public companies have great difficulty in using this structure because of the fact that dividends from a DISC to a C corporation are fully taxed at ordinary corporate rates, even though they are technically treated as capital gains income," he explained. For a closely held company, "the key is having the individual shareholders be the taxpayer.

"The individual taxpayers then get the benefit of the capital gains rate. The use of an S corporation is [also] acceptable, because the individual shareholders are the ones ultimately taxed on the DISC dividends, and therefore they get the capital gains rate."

S Corps, Partnerships Fit In Well

If your company already serves as a partner in a partnership that is engaged in the

IC-DISC continues on **PAGE 5**

Staff Writer: Mike Sampogna
Editor: Jon McKenna
Production Editor: Christina Sacco
Publisher: Richard M. Ossoff

Tax Incentives Alert (ISSN 1540-8302) is a privately circulated newsletter, published 12 times a year by Strafford Publications, 590 Dutch Valley Road, N.E., P.O. Box 13729, Atlanta, GA 30324-0729 (404) 881-1141.

Subscription: One year: \$467+\$14.95 S&H; Two-year: \$834+\$29.90 S&H (a \$100 savings) (Canada, US \$377; all others, US \$402).

Copyright © 2012 by Strafford Publications. All rights reserved. **REPRODUCTION IS PROHIBITED.** No part of this publication may be reproduced or transmitted in any form, by any means, electronic or mechanical, including photocopy, recording or any information storage or retrieval system, without prior written permission from the publisher.

Making cover-to-cover copies or faxes of this newsletter or forwarding it via email or other electronic means without our prior written permission is not fair use. Such copying is illegal under Federal Copyright law (17 USC 101 et seq.).

EDITORIAL ADVISORY BOARD

Paula Graff, Director of Corporate Tax
Toro Co.

Hollis Hyans, Tax Partner
Morrison & Foerster

Doug Lindholm, President and Executive Director
Council on State Taxation

Angela Lockman, Director
Incentives Services Group, TALX Corp.

Ali Master, National Director
Ernst & Young

Val P. Nielsen, Senior Director of Tax
J.R. Simplot

William Pearson, Director, State and Local Taxation
Sanofi-Aventis Pharmaceuticals

Mark Powers, Corporate Tax Director
Coca-Cola Bottling Co. Consolidated

Michael Press, Managing Principal
M.R. Press Consulting LLC

George Pretty, Partner
Parker Poe Adams & Bernstein

Tammy Propst, President
taxadvantagegroup LLC

Karin Richmond, Board Member
International Economic Development Council

Clint Stretch, Director of Tax Policy
Deloitte & Touche

To order

Call: (800) 926-7926, ext. 10

Fax: (404) 881-0074

E-mail: custserv@straffordpub.com
 or visit us online at:
www.straffordpub.com

Michigan Leaves Behind Era Of Statutory Credits, Development Agency

High-tech and other companies accustomed to tapping Michigan Economic Growth Authority tax credits must get ready for a new order in the state. Legislation was approved that eliminates MEGA credits, and the authority itself as of Jan. 1, 2012, as part of a deal for a \$1.7 billion overall tax cut for Michigan businesses. During former Gov. **Jennifer Granholm's** eight-year administration alone, the MEGA board distributed nearly \$3.6 billion of tax credits to 508 companies. However, officials felt it's more prudent now to budget specific sums: \$25 million each for entrepreneurial programs, film industry subsidies and a business marketing campaign; and \$100 million for all other credits and other tax incentives.

That \$100 million will be doled out on a case-by-case basis to each project. So, what is the impact of eliminating statutory MEGA credits for business-attraction and -retention, brownfield redevelopment and historic preservation? "We have had projects that were definitely affected," said **Ryan Kincaid**, CEO of the **Kincaid Henry Building Group**/East Lansing, Mich. "Losing the credits has basically made those projects unfeasible, from a financing standpoint." **Contact Info:** **Ryan Kincaid**, (517) 332-8210.

Four Years Sounds Smarter Than Two For Prolonging Energy Tax Credit

Normally, taxpayers' positions about extending federal tax incentives fall into one of two groups: Write the tax break permanently into the tax code or lobby for another short-term, two-year extension as the best they can get. Interestingly, a business coalition is aiming for an in-between goal by calling for a four-year extension of the federal renewable energy production credit. The 369-member group of manufacturing and farming businesses is fronted by the **American Wind Energy Association**/Washington. Congress did not act on a recently introduced bill that would have given four more years to the credit, which is to expire on Dec. 31, 2012.

Businesses argue a longer extension is merited because the alternative energy industry is enjoying a growth spurt and can lock in financing that uses the credit. "Congress should extend it now, because companies already are making planning decisions for 2013 projects," said **Martha Wyrsh**, president of **Vestas Americas**/Portland, Ore., a wind-turbine manufacturer that is part of the coalition. "We don't want to have to cancel those plans." **Contact Info:** **Martha Wyrsh**, (503) 327-2000.

Companies In This Issue

Ahold USA Inc.	12	IBM Global Services	3
Amazon.com Inc.	4	Kincaid Henry Building Group	2
American Wind Energy Assn.	2	Ogle International Tax Advisors	5
Baker & McKenzie	1,5	Overstock.com	4
Denyo Manufacturing Corp.	3	Papa John's International Inc.	12
EisnerAmper.	3	Reznick Group.	3
Emerson Electric Co.	12	J.R. Simplot Co.	1,5
Good Jobs First	4	Southwest Airlines.	5
IBM Corp.	3	Vestas Americas.	2

Missouri Comes Up With \$31.2 Million To Win IBM Competition

IBM Corp./Armonk, N.Y., cut the ribbon on a new technology services delivery center in Columbia, Mo. The project is anticipated to bring about 800 new jobs, according to the Governor's Office, and will deliver IT services (primarily server operations, project management and security services) to the company's outsourcing clients. IBM jobs are always coveted, so state officials authorized a \$31.2 million incentives package, which IBM can redeem over the next five years provided it meets individual program targets. That package breaks down into \$14.7 million of Missouri Quality Jobs tax credits and withholding tax refunds, \$8.6 million of Missouri BUILD tax credits, \$4.2 million of jobs training grants and \$3.5 million of bond financing.

A Columbia city office also facilitated the purchase of IBM's building. An IBM exec told *TIA* that Columbia first stood out due to proximity of the University of Missouri, and the incentives package helped seal the deal. "We were very impressed with Columbia and a few other cities," said **Joe Dzaluk** of **IBM Global Services/Armonk**. "We had them in our minds as a competitive site. Having said that, the overall package from the community was very good, and that is the main reason the project got going." **Contact Info:** Joe Dzaluk, (914) 499-1900.

N.J.'s Dropping Throw-Out Rule Hurts NOL/Credit Transfer Program

Corporate taxpayers should take heed of some unintended consequences for New Jersey's business tax certificate transfer program arising from elimination of the state's income throw-out rule. Under the certificate program, technology and biotech businesses can sell carried-forward NOLs and unused state R&D tax credits. The throw-out rule had multi-state corporations taxed by New Jersey based on an allocation formula that took income untaxed by other states into account. However, after the 2008 elimination of throw-out and of the "regular place of business" requirement, a qualified tech company now theoretically has less transferable NOL value to leverage, as a result of having to allocate more income outside the state.

What can a company do now? "There are some planning possibilities to alter your apportionment factor," said **John Genz**, director of the state and local tax practice at **EisnerAmper** in Edison, N.J. "But, you need to weigh the changes necessary against the need to sell off those NOLs. There has been legislation introduced to restore the provisions, but there has not been any traction on that yet." **Contact Info:** John Genz, (732) 395-4148.

State's Incentives Package Defrays 12% Of Company's Expansion Costs

A company investing nearly \$6.9 million to modernize its Kentucky plant will cover more than 12% of that bill with tax breaks. **Denyo Manufacturing Corp.**, a manufacturer of industrial electric generators, plans to add a new building housing advanced coating machinery, and update its processes and improve product quality, at its facility in Danville. The project is expected to be come on line by March 2012. Happy to help in retaining 101 manufacturing jobs, the state Economic Development Finance Authority approved up to \$783,000 of Kentucky Reinvestment Act investment tax credits. Also, the authority approved up to \$60,000 of tax benefits through the Kentucky Enterprise Investment Act, which lets companies recoup sales and use tax on construction costs and equipment.

Kentucky's incentives offer played a key role in Denyo's decision-making, the company's tax manager said. "It allowed us to move our corporate headquarters from L.A. to Kentucky," noted **Joey Harris**. "It's good that the state and local governments support projects like that. This was not the only offer we had, but it made the most sense for us." **Contact Info:** Joey Harris, (859) 236-3405.

Fed Housing Tax Credit Is Program That Works: Report

Stat trends look positive

The federal low-income housing tax credit turned age 25 in 2011 and was considered experimental when it was implemented by a 1986 tax reform law.

A report [[SP TAXLINK](#) I1201A-001] by the **Reznick Group/Bethesda, Md.**, accounting firm, "The Low Income Housing Tax Credit Program at Year 25: A Current Look at Its Performance," says if the incentive program can't be considered an unqualified success, it's darned close.

More than 2 million apartments have been built or refurbished in the U.S. during those 25 years with financing backed by low-income housing tax credits, notes the latest in a series of reports on the program from Reznick Group. "What has developed ... is an entire new development infrastructure built on the Program's effective administration by 50 state housing credit agencies and a reasonably efficient capital market."

The report includes survey data for 16,356 multi-family properties given by nearly all sponsors of U.S. housing credit-backed investments and some major institutional investors in credits. Among its findings:

- Over the last 15 years, demand for credits (which are allocated to state housing agencies based on state population) consistently exceeded supply.

- Annual foreclosure rates on credit-financed projects are under 1%.

- Average occupancy rates in these properties ranged from 96.3% to 96.6% from 2008-10, several points above the 89% to 91% typically needed to break even.

- Debt coverage ratios on these multi-family projects, while leaving little excess cash, have risen to 1.24 in 2010 from 1.13 early in the past decade.

- Annual net cash flow from an average apartment has been on the rise in recent years, jumping to \$412 in 2010 from \$246 just two years earlier.

- While the share of apartment properties falling below 90% occupancy (a problem level) represents a volatile statistic, that group dropped to 9.3% in 2010 from 12.5% in 2009, and ranging from 11.5% to 18% in years before 2008. **T**

Deals Amazon Swung Over Its New Warehouses Called Unconstitutional

Two leading law professors fired the latest salvo against **Amazon.com Inc./Seattle**, asserting the company's bargains with South Carolina and Tennessee seem to violate the federal Commerce Clause. Amazon has agreed to build warehouses in the states in exchange for delayed sales tax collection requirements. University of Georgia law professor **Walter Hellerstein** and his University of Arizona colleague, **John A. Swain**, argue such special treatment discriminates against other out-of-state retailers that cannot establish physical presence in the states without collecting tax. Amazon has built a national network of warehouses but only collects sales taxes on items shipped to New York, Washington, Kansas, Kentucky and North Dakota.

During a recent congressional hearing on remote sales tax collection legislation, the company endured strong criticism from witnesses such as **Patrick Byrne**, CEO of **Overstock.com/Salt Lake City**, who was irate over Amazon's position that a warehouse owned by an "independent affiliate" does not create nexus. "My tax department would never let me take a position so aggressive," Byrne told the House Judiciary Committee. "We're considering opening a warehouse in Kentucky and if we do, we will collect sales tax on shipments" into the state. Currently, however, Overstock only collects tax on shipments into its home state of Utah. **Contact Info: Patrick Byrne**, (801) 947-3282.

Florida, County And City Govts. Go To Bat For Aviation Services Project

Chromalloy, an Orangeburg, N.Y., aviation services company, is relocating its corporate headquarters and 70 jobs to Palm Beach Gardens, Fla. Chromalloy performs R&D in the gas turbine engine sector and recently opened a \$30 million plant in Tampa, Fla. The company is not building a new facility in Palm Beach Gardens but rather renting an existing 300,000-square-foot site. It landed a total \$1.06 million of tax refunds and other jobs-creation incentives from state, Palm Beach County and city governments. About \$700,000 is from the state, including approximately \$500,000 in a Quick Action Closing Fund grant.

In the selection of Palm Beach Gardens, "the incentives were important but not the most important thing," Chromalloy VP of Tax **Andrew Farrant** said. "We had a few offers, but the state bent over backwards for us." **Contact Info: Andrew Farrant**, (813) 434-4520. 📞

Stafford Tax Briefings

IC-DISC: Mastering Intricacies of the Federal Tax Incentive for Exporters

Overcoming Compliance Challenges to Maximize Tax Benefits

An encore 110-minute seminar with an interactive Q-and-A session

Tuesday, Feb. 7, 2012, 1 p.m. – 2:50 p.m. Eastern

Only one federal tax incentive exists on the books specifically for U.S. businesses with export income: the IC-DISC. With a more than 100% increase in small- to medium-sized exporters since 1992, accounting firms can't afford to be in the dark on this lucrative planning strategy.

An IC-DISC, or Interest Charge-Domestic International Sales Corporation, can offer exporters a substantial tax savings by letting them create a books-only entity that pays tax on export income at a 15% capital gains rate rather than a 35% income tax rate.

Listen as our panel of veteran advisors prepares you for both complexities in entity formation and asset management, and benefits to leverage with this lucrative tax-saving strategy.

To register today or for information about **CPE** or **CLE**, contact customer service at custserv@straffordpub.com or (800) 926-7926 Ext. 10.

No State Pulls An A For Tough New Jobs Standards

The **Good Jobs First/Washington** watchdog group recently graded, numerically and by letter, states for how effectively they impose and enforce jobs and wage standards on their economic development standards. [**SP TAXLINK** I1201A-002] The organization is a tough grader, as seen below. 📊

State	Rank, Grade
Nevada	1, B
North Carolina	2, B-
Vermont	3, B-
Iowa	4, B-
Maryland	5, C+
Oklahoma	6, C+
Virginia	7, C+
Florida	Tie 8, C
Rhode Island	Tie 8, C
Tennessee	10, C
Missouri	11, C
Wisconsin	12, C
Colorado	Tie 13, C
Georgia	Tie 13, C
Kansas	Tie 13, C
Nebraska	16, C-
Arizona	Tie 17, C-
Delaware	Tie 17, C-
Mississippi	Tie 17, C-
South Carolina	20, C-
Maine	21, C-
Texas	22, C-
Arkansas	23, C-
New Jersey	24, D+
Minnesota	25, D+
West Virginia	26, D+
Indiana	Tie 27, D+
Kentucky	Tie 27, D+
New Hampshire	Tie 27, D+
Louisiana	30, D+
Alabama	31, D+
Utah	32, D+
Michigan	Tie 33, D+
Montana	Tie 33, D+
Ohio	Tie 33, D+
Connecticut	36, D+
Illinois	37, D
South Dakota	38, D
New Mexico	39, D
Idaho	Tie 40, D
Pennsylvania	Tie 40, D
California	42, D
Massachusetts	Tie 43, D
New York	Tie 43, D
Hawaii	Tie 45, D-
North Dakota	Tie 45, D-
Washington	47, D-
Oregon	48, D-
Wyoming	49, D-
Alaska	50, D-

Research Credit Study

continued from page 1

be forthcoming with information to the consultants, Nielsen has found.

Frequent Progress Reports

However, J.R. Simplot is a substantial company, and not every corporate tax department will have the time and people to closely ride herd on performance of a research credit study. Should oversight resources be in short supply, you should at least demand frequent progress reports and in-process work papers from the consulting firm.

“Some [consulting] firms have their own proprietary software for putting together work papers,” Nielsen noted, which enables them to expeditiously let clients review in-process work.

If not, the consultants at the very least can provide old-fashioned paper reports or use e-mail to best advantage. The key, he said, is to review that information frequently and use the tax staff’s own knowledge of their company and of the R&E regs to make refinements along the way. This will save a mountain of additional review on the back end.

IC-DISC

continued from page 1

same trade or business, it again is well situated to leverage an IC-DISC, he said. Organizers of an exporting partnership could establish an S corporation or other pass-through entity, and treat profits attributable to the S corporation as profits.

One reason public corporations tend to shy from IC-DISCs is that having their shareholders own DISC stock “is not the most convenient thing that you can do,” Block said. “We have looked into it, and some other accounting firms have looked into it, and ultimately the underwriters just don’t want to get involved.”

However, businesses can investigate what is known as a “paired share” arrangement. In this structure, each DISC shareholder gets a share of the operating company as well. “They use the DISC as an income-deferral vehicle,” he explained.

Qualified export receivables are the principal asset housed in the DISC in a paired share structure. Those receiv-

Insist On Knowledge Of Your Industry

Knowledge of your company’s industry is vital with a research credit report outsourcing firm, as **Dale Yancey**, senior manager of income and excise taxes at **Southwest Airlines/Dallas**, well knows.

On a prior report engagement, “the problem we had was [the consultants] were accountants, not software engineers. So, you had accountants talking to software engineers, and there’s kind of a communication breakdown.”

On audit, American was denied an R&E credit on flight information data-tracking software it had developed in-house. Yancey feels strongly his company should have qualified for that credit and said it still may try to claim it in future years, although he’s more inclined to fault IRS policy.

“It’s a very difficult credit to maintain on audit, and a very contentious issue with the IRS. They just don’t like people taking the credit, in my opinion,” and experience with audit defense as well as credit studies can be key selling points for a prospective consultant.

ables can generate as much as \$10 million of interest or discount income.

Stay Up To Date On Pricing Rules

“The IC-DISC can either engage in commission-based transactions or buy-sell transactions,” added **Jerry Ogle**, president of **Ogle International Tax Advisors/Bradenton, Fla.** “If it’s going to be a buy-sell, and we’re talking in the context of inventory, the DISC will buy the inventory from a related supplier or another party and export that property abroad themselves.”

A commission-based entity could work with a related-party supplier and ultimately earn the commission.

“In either event, when the DISC is looking at how it must price and calculate its taxable income, the Code has provided three general categories for it to do that,” Ogle said.

The first is a gross receipts method; “you would calculate the commission at 4% of qualified gross receipts. The second method would be 50% of combined taxable income. The third method would be Sect. 482.”

That said, should Southwest undertake another credit study over the next few years, Yancey plans to take care to recommend a firm “with more experience on the engineering and software side.”

IRS Contacts Outweigh Firm’s Boasts

When selecting a consultant, don’t be overly swayed by anecdotes about big incremental increases in research credits won for other clients. In fact, when J.R. Simplot was shopping for a firm to handle its study, Nielsen was more impressed by the strong rapport that the firm he recommended had with the IRS than with its claims track record or analysis of his company’s potential for additional credits.

Whatever the consulting firm’s experience and reputation, it’s up to the client’s tax staff to hold the outsourcer’s collective feet to the fire.

“Use the prospect of future business as a lever to put pressure on them to deliver,” Nielsen advised. “If they don’t get results, make it clear that you won’t use them again.”

Contact Info: Val Nielsen, (208) 389-7244; Dale Yancey, (214) 792-3012.

When a taxpayer taps the 4% or 50% methods, the DISC doesn’t need to perform any economic function or have any required role, Ogle said.

In other words, “it really does serve as just a paper corporation. When you are looking at those methods, the DISC can increase the commission by 10% of the export expenses. But, keep in mind that if you want to use the export promotion expenses, [they are] limited to a buy-sell DISC and not based on commission transactions.”

Export promotion expenses generally cover administrative costs, he pointed out. Certain freight will qualify along with packaging and design costs.

“The key here is that the DISC needs to incur those costs itself,” Ogle stressed. “Or, there is a caveat where if a related party is incurring those costs, as long as a contract is in place prior to the allocation of the costs, the related party can incur those expenses on the DISC’s behalf.”

Contact Info: Neal Block, (312) 861-2937; Jerry Ogle, (941) 361-1147.

Mainstream Federal Business Tax Incentives Now Available To Corporations: Amounts And Terms Of Each

Federal Incentive(s)	Benefits Available To Qualifying Taxpayers	Link For Additional Information
Advanced Energy Credit for Manufacturers	Credit is for up to 30% of qualifying investment in a qualifying advanced energy project, which is defined as one that establishes, expands or re-equips a manufacturing facility to produce property used to derive energy from sunlight, wind, geothermal deposits or other renewable resources.	[SP TAXLINK] I1201A-003
Alcohol and Cellulosic Biofuel Fuels Credit	Credit covers separate alcohol mixture, alcohol, small ethanol producer and cellulosic biofuel producer credits; at rates ranging from \$0.10 to \$1.01 per gallon, depending on fuel type and usage. Taxpayer can claim or elect not to claim the broader credit at any time within three years after the return due date.	[SP TAXLINK] I1201A-004
Alternative Fuel Vehicle Refueling Property Credit	Credit applies to the cost of any qualifying fuel vehicle refueling property placed in service and generally is the lesser of the property's cost or \$30,000.	[SP TAXLINK] I1201A-005
Alternative Motor Vehicle Credit	Credit is for up to \$3,000 (depending on make and model) per qualifying alternative motor vehicle placed in service during the tax year. It is attributable to depreciable property, including vehicles used for business or investment, and is treated as a general business credit.	[SP TAXLINK] I1201A-006
American Samoa Economic Development Credit	Taxpayer must be an existing credit claimant; have taken a Sect. 936 application in the last tax year starting before Jan. 1, 2006; and have derived either 80% or more of gross income from sources in American Samoa during the applicable period, or 75% or more from active conduct of a business in American Samoa during that period. Credit equals sum of 60% of qualified compensation and 40% of depreciation deduction for medium-life tangible property, 15% of depreciation deduction for short-life property and 65% of depreciation deduction for long-life property.	[SP TAXLINK] I1201A-007
Biodiesel and Renewable Diesel Fuels Credit	Credit consists of separate biodiesel, renewable diesel, biodiesel mixture, renewable diesel mixture and small agri-biodiesel producer credits. It equals \$1 per gallon of qualifying fuel produced.	[SP TAXLINK] I1201A-008
Carbon Dioxide Sequestration Credit	Credit is \$20 per metric ton of carbon dioxide that is captured at a qualifying facility and placed in a secure, geological storage area or used in a qualifying enhanced oil or natural gas recovery project. Or, it is \$10 per metric ton of carbon dioxide that is captured at a qualifying facility and used as a tertiary injectant in a qualifying enhanced oil or natural gas recovery project, and placed in a secure, geological storage area.	[SP TAXLINK] I1201A-009
Credit for Contribution to Selected Economic Development Corporations	Credit is 5% of a qualifying contribution to a community development corporation (CDC) and is awarded over a 10-year period, beginning with the year of the contribution. A qualifying contribution is any transfer of cash to a selected CDC before June 30, 1999 and that is available for the CDC's use for at least 10 years.	[SP TAXLINK] I1201A-010
Credit for Employer-Provided Childcare Facilities and Services	Credit equals 25% of qualifying childcare facility expenditures paid or incurred, plus 10% of qualifying childcare resource and referral expenditures paid or incurred, up to a maximum \$150,000 credit per tax year. Credit may be claimed any time within three years after the due date of either an original or amended return.	[SP TAXLINK] I1201A-011
Credit for Increasing Research Activities	Qualifying research means expenses can be treated as Sect. 174 expenses, and it must be undertaken to find information that is technological in nature and for intended use in the taxpayer's new or improved business component. Substantially all research activities must be elements of a process of experimentation relating to a new or improved function, performance, reliability or quality. Credit equals 13% or 20% of qualified research expenses, depending on nature of research and activities. Alternative simplified credit equals 6% or 14% of expenses, depending on nature of research and activities.	[SP TAXLINK] I1201A-012
Domestic Production Activities Deduction	Deduction generally is 9% of the smaller of either qualified production activities income or adjusted gross income for an individual, estate or trust figured without the deduction. It cannot exceed 50% of W-2 wages paid, including those allocated to a company on a Schedule K-1.	[SP TAXLINK] I1201A-013
Empowerment Zone and Renewal Community Employment Credit	Credit is 20% of the employer's qualified wages (up to a maximum \$15,000 credit) paid or incurred during the calendar year to qualified empowerment zone employees, who must have performed substantially all of their work in the zone.	[SP TAXLINK] I1201A-014
Energy Efficiency Deduction	Deduction can reach as much as \$1.80 per square foot of floor area in commercial buildings that achieve a 50% energy savings target. Those falling short of the 50% threshold can qualify for a deduction of up to 60 cents per square foot of floor area, if they hit a 16.7% energy savings target.	[SP TAXLINK] I1201A-015
Energy Investment Tax Credit	Credit generally equals 30% of qualifying investment in in-service facilities that produce electricity from wind and certain other renewable resources after Dec 31, 2008.	[SP TAXLINK] I1201A-016
Energy Production Tax Credit	Credit is for up to 2.1 cents per kilowatt-hour of electricity produced from renewable sources.	[SP TAXLINK] I1201A-017
Gulf Opportunity Zone Employee Retention Credit	An eligible employer that conducted an active trade or business in a standard GO Zone, or the Hurricanes Rita or Wilma GO Zones, can claim a credit of 40% of qualifying wages for an eligible retained employee, up to a maximum \$6,000 of wages per employee. Generally, a federal deduction for salaries and wages must be reduced by the amount of the credit. Eligible employees had to reside in a zone on the date of the natural disaster.	[SP TAXLINK] I1201A-018
Gulf Opportunity Zone Increase in Rehabilitation Credit	Credit is increased in relation to qualifying rehabilitation expenditures paid or incurred after Aug. 27, 2005 and before Jan. 1, 2009, on buildings situated in a zone. For pre-1936 buildings other than certified historic structures, the credit percentage is increased to 13% from 10%; for certified historic structures, it goes to 26% from 20%.	[SP TAXLINK] I1201A-019
Gulf Opportunity Zone Increased Sect. 179 Deduction	Increased deduction limit is the smaller of \$100,000 or the cost of qualifying Sect. 179 zone property placed in service during the tax year.	[SP TAXLINK] I1201A-020
Gulf Opportunity Zone Special Depreciation Allowance	Allowance is for qualifying zone property placed in service after Aug. 27, 2005 and equals an additional deduction of 50% of the property's depreciable basis, after any Sect. 179 deduction and before figuring regular depreciation. The special allowance applies only to the first year property is placed in service.	[SP TAXLINK] I1201A-021
Historic Preservation Credit	Credit is 20% of qualifying investment in certified rehabilitations of certified historic structures, and 10% for rehabilitations of non-historic, non-residential buildings built before 1936. Under a "substantial rehabilitation" test, rehabilitation costs must exceed the pre-rehabilitation cost of a depreciable building.	[SP TAXLINK] I1201A-022
Indian Employment Credit	Credit is 20% of the employer's qualified wages (up to a maximum \$15,000 credit) paid or incurred during the calendar year to employees who are registered members of Indian tribes. At least 50% of their total wages must have been paid by the employer.	[SP TAXLINK] I1201A-023

Mainstream Federal Business Tax Incentives Now Available To Corporations: Amounts And Terms Of Each (Cont.)

Federal Incentive(s)	Benefits Available To Qualifying Taxpayers	Link For Additional Information
Investment Credit	Credit consists of separate rehabilitation; energy; qualifying advanced coal, gasification or advanced energy project; and qualifying therapeutic discovery project credits (at amounts ranging from 10% to 30% of expenditures). Investment credit property is any depreciable or amortizable property qualifying for those projects that is principally used inside the U.S. by a private business. Qualifying "progress expenditures" are made before the property is placed in service.	[SP TAXLINK] I1201A-024
Liberty Zone Increased Sect. 179 Deduction	Dollar limit on deduction is increased for certain property placed in service in a zone. Increase equals the smaller of \$35,000 or the cost of Sect. 179 property that also is qualified Liberty Zone property and placed in service during the tax year.	[SP TAXLINK] I1201A-025
Low Sulfur Diesel Fuel Production Credit	Credit rewards production of low-sulfur diesel fuel by a qualifying small business refiners. It generally equals 5 cents per gallon of low-sulfur diesel fuel produced during the tax year, but total credits claimed for all tax years cannot exceed the refiner's qualified costs.	[SP TAXLINK] I1201A-026
Low-Income Housing Credit	Credit is allowed for a qualifying low-income building placed in service after 1986 and generally is taken over a 10-year period. Credit cannot exceed the amount of eligible basis allocated to the building. Amount of credit (minimum credit is 9%) varies, depending on the percentage of time the building is occupied by and in service to low-income residents and the building's age.	[SP TAXLINK] I1201A-027
Manufacturer's Energy Efficient Appliance Credit	Credit ranging from \$25 to \$200 per appliance is given to manufacturers of certain dishwashers, clothes washers and refrigerators manufactured after Dec. 31, 2010. The total credit for any type of qualifying appliance is calculated by multiplying an applicable amount by the eligible production for each type.	[SP TAXLINK] I1201A-028
Modified Accelerated Cost-Recovery System	A 50% first-year bonus depreciation deduction was available on qualifying property bought by a taxpayer after 2007 and placed in service before 2012. Property must have a recovery period of 20 years or less under normal federal depreciation rules, and its original use must have commenced with the taxpayer.	[SP TAXLINK] I1201A-029
New Hire Retention Credit	Credit is tied to each retained, qualifying worker whose first 52 consecutive weeks of employment ended in the current tax year. Workers must not have been employed for more than 40 hours during the 60-day period before they started with the company, except in cases of involuntary separation. However, the employee's wages for the second 26 consecutive weeks must be at least 80% of those in the first 26 weeks. Credit equals the smaller of \$1,000 or 6.2% of the employee's qualifying wages.	[SP TAXLINK] I1201A-030
New Markets Credit	Credit rewards qualifying investments in community development entities (CDEs), which are domestic corporations or partnerships formed to serve and/or provide investment capital to lower income communities. They must be certified by the Treasury Department's Community Development Financial Institutions (CDFI) Fund. Credit is claimed over seven years and equals 5% of qualifying investment in years one through three, 6% in years four through seven.	[SP TAXLINK] I1201A-031
Nonconventional Source Fuel Credit	Credit is based on qualifying coke, coke gas and synthetic fuels produced and sold to an unrelated party during the tax year. It equals \$3 times the barrel-of-oil equivalent of coke or coke gas produced.	[SP TAXLINK] I1201A-032
Qualified Plug-in Electric and Electric Vehicle Credit	If credit is tied to depreciable property included in vehicles used for business or investment purposes, it is treated as a general business credit; otherwise, it is claimed as a personal credit allowed against both regular tax and AMT. Business credit equals \$2,500 per vehicle; it is scheduled to expire effective with qualifying vehicles acquired after 2011.	[SP TAXLINK] I1201A-033
Qualified Railroad Track Maintenance Credit	Credit applies to qualifying track maintenance expenditures paid or incurred during the tax year. It is the lesser of 50% of qualifying maintenance expenditures, or the number of qualifying miles of track owned times \$3,500.	[SP TAXLINK] I1201A-034
Renewable Electricity, Refined Coal, and Indian Coal Production Credit	Credit is allowed only for the sale of electricity, refined coal or Indian coal produced in the U.S. or U.S. possessions from qualified energy resources at a qualified facility. It equals up to 1.5 cents per kwh for electricity, \$4.375 per ton for coal or \$2 per barrel-of-oil-equivalent for fuel produced in the steel industry's liquefaction of coal waste.	[SP TAXLINK] I1201A-035
Renewable Energy Production Credit	Credit is for up to 2.1 cents per kilowatt-hour of energy from facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower, and marine and hydrokinetic renewable energy.	[SP TAXLINK] I1201A-036
Sect. 179 Deduction	Companies can expense in one year, rather than over time, qualifying property placed in service. Maximum deduction is \$500,000 (\$535,000 for qualified empowerment zone property). For tax years starting after 2011, Sect. 179 property will no longer cover certain real property, the increased deduction limit and threshold before a reduction is required no longer apply, and the higher deduction will not apply to qualified empowerment zone property placed in service.	[SP TAXLINK] I1201A-037
Special Liberty Zone Depreciation Allowance	Allowance is for qualified zone property placed in service after Sept. 10, 2001 and equals an additional deduction of 30% of the property's depreciable basis. To figure the depreciable basis, first multiply the property's cost or other basis by the percentage of business/investment use, and then reduce that amount by any Sect. 179 deduction and certain other deductions.	[SP TAXLINK] I1201A-038
Welfare-to-Work Credit	Credit equals 35% of qualifying first-year wages paid to or incurred by recipients of long-term family assistance during the tax year, and 50% of qualifying second-year wages. A certification of each employee by a state employment security agency is required.	[SP TAXLINK] I1201A-039
Work Opportunity Credit	Credit is tied to qualified first- or second-year wages paid to or incurred for targeted group employees during the tax year. Targeted employee groups are Hurricane Katrina employees, long-term family assistance recipients, Temporary Assistance for Needy Families (TANF) recipients, qualified veterans, qualified ex-felons, designated community residents, vocational rehabilitation referrals, summer youth employees, SNAP recipients, SSI recipients, unemployed veterans or disconnected youth. Credit ranges from 25% to 50%, based on hours worked and category of employee.	[SP TAXLINK] I1201A-040

Source: TIA research and analysis.

AGENCIES**Regs Updated To Qualify Entities For New Markets Credits**

Final regs explain how an entity serving certain targeted populations can qualify an active, low-income community business, for purposes of new markets tax credits. The regs reflect changes in the NMTC law made by the American Jobs Creation Act of 2004. Effective Dec. 5, 2011. ▶IRS TD 9560, Dec. 5, 2011. [[SP TAXLINK](#)] I1201A-041]

Accountant's Goof Didn't Doom Timely Filing Of IC-DISC Form

A corporate taxpayer was entitled to a 60-day extension to file Form 4876 (election to be treated as an interest charge DISC). The taxpayer's accountant failed to notify it of the filing duties and deadline, and the taxpayer itself acted reasonably and in good faith. ▶IRS Letter Ruling 201147022, posted December 2011. [[SP TAXLINK](#)] I1201A-042]

Law Changes Bring Adjustments To Film/TV Deduction

One set of final regs under Sect. 181 give rules on deducting costs incurred in producing qualified film and TV productions. They reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. Another set of final, temporary and proposed regs under Sect. 181 relate to film and TV industry deductions specifically for productions starting after Dec. 31, 2007. ▶IRS TD 9551 and TD 9552, Nov. 21, 2011. [[SP TAXLINK](#)] I1201A-043]

Management Contract Didn't Nullify Bonds' Tax Exemption

An authority in charge of a public convention center issued a management contract to a private entity. However, that contract actually didn't violate the private business use provision of the facility's construction bonds and nullify their federal tax exemption. A facts-and-circumstances test that took into account base and incentive fees, reimbursement payments and the contract term resulted in a ruling for the taxpayer. ▶IRS Letter Ruling 201145005, posted December 2011. [[SP TAXLINK](#)] I1201A-044]

Taxpayers Get More Time To Elect NOL Carrybacks

An acquiring company got a 45-day extension to elect to relinquish the portion of a target corporation's NOL carryback attributable to when that target was a member of another group. The acquirer reasonably relied on a qualified tax professional, who failed to advise on the need for an election. Separately, three other taxpayers were granted extensions to elect extended carrybacks

for entire consolidated NOLs. ▶IRS Letter Rulings 201149019, 201146013, 201146015 and 201147021, posted December 2011. [[SP TAXLINK](#)] I1201A-045 through I1201A-048]

Foreclosure Didn't Force Recapture Of Housing Tax Credits

Termination of a building's extended-use period due to a foreclosure did not bring about an automatic recapture of Sect. 42(j) low-income housing credits. A foreclosure-related termination of the period did not result in a "disposition" of the building. ▶IRS Letter Ruling 201146016, posted December 2011. [[SP TAXLINK](#)] I1201A-049]

338(h)(10) Election Allowed For Group Parent And New Sub

The common parent in a consolidated group and the group's new subsidiary were able to make a Sect. 338(h)(10) election for qualified stock purchases in entities sold by either of them. The transactions led to a sale of one business to an acquiring company, and the split-off of a new corporation to the parent's shareholders. ▶IRS Letter Ruling 201145007, posted December 2011. [[SP TAXLINK](#)] I1201A-050]

IRS Hands Out Portions Of Unused Housing Tax Credits

Allocations of unused low-income housing tax credits from calendar 2011 range from a high of \$570,425 for California to a low of \$9,213 for the District of Columbia. ▶IRS Rev. Proc. 2011-57, Dec. 5, 2011. [[SP TAXLINK](#)] I1201A-051]

No Change Made In Business Vehicle Deduction For 2012

For 2012, the IRS optional standard mileage rate for deductions of business vehicle usage remains at 55.5 cents per mile. ▶IRS Notice 2012-1, Dec. 11, 2011. [[SP TAXLINK](#)] I1201A-052]

CONGRESS**Do Counter-Recessionary Incentives Work? Report Asks**

Congressional staff evaluate the quantitative impact of federal incentives approved during the recessionary period starting in December 2007. These incentives were part of the American Recovery and Reinvestment Act of 2009; Worker, Homeownership, and Business Assistance Act of 2009; and Hiring Incentives to Restore Employment (HIRE) Act. ▶Congressional Research Service, "Business Investment and Employment Tax Incentives to Stimulate the Economy," Dec. 5, 2011.


Full texts of documents are available free to TIA subscribers.

Visit www.straffordpub.com/sptaxlink and enter the number that follows .

Customer Service: (800) 926-7926, ext. 10


ARIZONA

Research Credit Expenses Can't Be Carried Over To Next Yr.

In an individual income tax ruling whose core elements are relevant to companies, individuals were not entitled to a state research credit for increased research expenses they claimed were carried over from a prior year. The research credit is taken for the year qualifying activities are performed and expenses incurred. ▶Ariz. Revenue Department Hearing Officer Decision No. 201100061-I. [ I1201A-053]


CALIFORNIA

Proposed Regs On Film Industry Income Are Revised


FTB issues second 15-day notices on proposed regs on apportioning income of motion picture and TV film producers and distributors, and TV networks. The board on Dec. 1 made changes to previously issued versions of the regs, based on public comments. Reg. 25137-8.1 would apply to tax years starting on or after Jan. 1, 2011, and Reg. 25137-8.2 to tax years beginning on or after that date. ▶Calif. Franchise Tax Board Proposed Regs. 25137-8.1 and 25137-8.2, revised December 2011. [ I1201A-054, I1201A-055]

COLORADO


Changes Coming In Enterprise Zone Incentive Approval

Revenue staff updates its guidance on enterprise zone tax credits and sales tax exemptions, to include recent changes. For any credit generated after 2011, most zone credits will have to be pre-certified by a zone administrator, prior to any qualifying business activity. Also, starting in 2012, any original or amended state return claiming a credit must be e-filed (although the form has not yet been posted). ▶Colo. Revenue Department FYI General 6, updated December 2011. [ I1201A-056]

Limits Passed For 2013-14 In Corporate Childcare Credit


For tax years starting sometime in calendar 2013, the state child care contribution tax credit would be limited to the total of 50% of 2012 carryforward plus any credit earned in 2013. For tax years starting sometime in calendar 2014, the credit would be limited to the total of 75% of 2013 carryforward plus any credit earned in 2014. Effective Dec. 30, 2011. ▶Colo. Revenue Department Amended Reg. 39-22-121, December 2011. [ I1201A-057]

TABOR Credits, Refunds Still Available For 2011

Reg on refunds of state corporate income, sales and use, and other taxes due to surplus funds is updated to note TABOR credit availability for the 2011 tax years. A number of tax credits, subtractions and rate adjustments remain available for 2011 filings. Effective Dec. 30, 2011. ▶Colo. Revenue Department Amended Reg. 39-22-120, December 2011. [ I1201A-058]


FLORIDA

Governor Seeks Income, Sales, Property Tax Breaks


As part of his FY12-13 budget plan, Gov. **Rick Scott** will push for an increase in the corporate income tax exemption to \$50,000 (it already is scheduled to rise to \$25,000 from \$5,000 next year), a reduction in the threshold for the industrial machinery sales tax exemption to items that would increase productive output by 5% (now 10%), and expansion of the business tangible personal property tax exemption to \$50,000 worth of property from \$25,000 now. ▶Fla. Governor's Office News Release, Dec. 7, 2011. [ I1201A-059]

Expanding Beverage Company Can Land Sales Tax Exemptions

A beverage manufacturer qualifies for a state sales tax refund on equipment purchased to produce a new product line. When it installs


a second new production line to turn out a new type of container for that new product, it can seek an expanding business sales tax exemption as long as it can show that production of the new product increased by at least 10%. ▶Fla. Revenue Department Technical Assistance Advisement No. 11A-030. [ I1201A-060]

Air Carrier Gets State Corporate Income, Sales Tax Breaks


An air carrier that also runs a repair station is nonetheless entitled to apportion 100% of its revenue to Florida, for corporate income tax purposes, based on revenue-miles. That taxpayer also qualifies to elect to pro-rate state sales and use tax for its purchases of tangible personal property, including aircraft leases and parts purchases. ▶Fla. Revenue Department Technical Assistance Advisement No. 11A-029. [ I1201A-061]

ILLINOIS

Several Positive Actions Taken On Tax Incentives


The state NOL deduction is reinstated in \$100,000 annual phases through 2015, and several tax credits, exemptions and deductions slated to sunset in 2011 through 2013 get five-year extensions. Separately, tax credits are authorized for specific taxpayers that move their corporate headquarters to Illinois. ▶Ill. Senate Bill 397, signed by governor Dec. 16, 2011. [ I1201A-062]

State Tax Incentives Get Extended For Several Years


Bill prolongs the state R&D tax credit to pre-2016 years from pre-2011 years before, and extends the personal property replacement credit to 2018 from 2013. Also, the repeal of the Business Location Efficiency Incentive Act is delayed until Dec. 31, 2016 from 2011; and the open incentive period for the small business job creation tax credit is extended to June 30, 2016 from 2011. ▶Ill. Senate Bill 397, signed by governor Dec. 16, 2011. [ I1201A-063]

INDIANA

Split Decision For Companies On Refrigeration Equipment


Two taxpayers in the foods business lost their arguments for a state manufacturer's sales and use tax exemption. The equipment in question involved a "finished goods cooler" refrigeration system and a "final freezer" system. However, in a third claim involving equipment used to evaporate moisture from finished products, to the extent that the taxpayer could show a relation to exempt refrigeration equipment, it could seek a tax refund. ▶Ind. Revenue Department Supplemental Letters of Findings Nos. 04-20100681, 04-20100682 and 04-20100698. [ I1201A-064 through I1201A-066]

No Mfg. Sales Tax Exemption Allowed On Gas Cylinders

A company needed welding gas cylinders to contain gases; otherwise, its production process could not occur. However, even though these cylinders were "necessary and essential," they were not directly used in production. Thus, they did not qualify for a state manufacturer's sales and use tax exemption. ▶Ind. Revenue Department Letter of Findings No. 04-20110214. [ I1201A-067]

IOWA

Multiple Years Of Tax Credits Denied On Conversion Center

The state properly disallowed a taxpayer's claim for a renewable energy tax credit on a refuse-conversion facility, for which it had obtained credits in the prior year. The taxpayer argued its facilities were similar to wind energy conversion centers, for which credits are available on an annual basis. Decision released Nov. 15, 2011. ▶*Phoenix C & D Recycling v. Department of Revenue*, Iowa Department of Inspections and Appeals. [ I1201A-068]

Shift In Administration Planned For Energy Incentives

Rules changes would implement the 2011 Legislature's decisions to eliminate the state Energy Independence Office and Iowa Power Fund, and to transfer administration of energy related grants and incentives to the Economic Development Au-

thority. ▶Iowa Economic Development Authority Proposed Rescission of Rules Chap. 400 and New Chap. 401, Nov. 16, 2011. [[SP TAXLINK](#)] I1201A-069]

Revisions Affect Terms Of Several Business Tax Credits

Amendments make technical corrections to several state tax credit programs, and change the order in which those credits are claimed. The incentives include the redevelopment, Endow Iowa, renewable energy, wind energy and historic preservation credits. Effective Jan. 4, 2012. ▶Iowa Revenue Department Amended Rules 701-42.19(404A, 422) through 701-58.13(15E), Nov. 30, 2011. [[SP TAXLINK](#)] I1201A-070]

Demonstration Fund Coming For Federal SSBCI Money

Under terms of Iowa's accepting more than \$13 million from the federal government under the State Small Business Credit Initiative (SSBCI), \$5 million would be spent on an SSBCI demonstration fund. ▶Iowa Economic Development Authority Proposed Rules Chap. 117, Nov. 16, 2011. [[SP TAXLINK](#)] I1201A-071]

KENTUCKY

New Web Portal Has Registration, Incentives Information

In October, the Revenue Department launched a "Kentucky Business One Stop" Web page at <http://onestop.ky.gov>. It is designed to let a taxpayer register a new business online; provide additional information about economic development incentives, employee insurance and business counseling; and give a more effective communication line to the department. ▶Ky. Revenue Department *Withholding ReveNews*, December 2011. [[SP TAXLINK](#)] I1201A-072]

MARYLAND

Green Building Credit Regulations Get Emergency Status

A joint committee has granted emergency status to state green building tax credit regs, meaning they are now updated, and taxpayers must file a copy of an initial credit certificate and eligibility certificate with the Maryland Energy Administration. Effective Oct. 20, 2011 through Dec. 31, 2011. ▶Md. Legislative Services Department Reg. 14.26.02 et al., posted Nov. 18, 2011. [[SP TAXLINK](#)] I1201A-073]

Fee Increased To Run Sustainable Communities Credit

The administration fee for the sustainable communities tax credit program rose to 3% from 1%, effective Nov. 28, 2011. ▶Md. Planning Department Amended Reg. 34.04.07, Nov. 18, 2011. [[SP TAXLINK](#)] I1201A-074]

NEBRASKA

Nebraska Advantage Wage, Investment Standards Change

As of Jan. 1, 2012, companies must meet new average annual wage and investment requirements to qualify for Nebraska Advantage Act income and sales tax benefits. Each of six tiers has separate, new wage and investment standards. ▶Neb. Revenue Department Revenue Ruling 29-11-2, Nov. 22, 2011. [[SP TAXLINK](#)] I1201A-075]

NEW JERSEY

Lawmakers Back New Jobs Creation/Retention Credit

Legislature approves a new jobs-creation and -retention tax credit for businesses that invest at least \$20 million in a qualified New Jersey facility, where they will retain or create at least 100 fulltime positions. The credit would equal \$5,000 per year per qualifying position, and the Economic Development Authority would be authorized to grant bonus awards of \$3,000 per job. At press time, governor had not yet decided whether to sign the bill. ▶N.J. Senate Bill 3033, passed by Legislature Dec. 15, 2011. [[SP TAXLINK](#)] I1201A-076]

NEW YORK

Tax Rate To Be Cut By 50% For Some Manufacturers

Effective with tax years starting after 2011 and before 2015, the state will cut the corporate franchise tax rate in half for eligible

manufacturers. The Taxation and Finance Department later will establish guidelines and criteria for eligible New York manufacturers. ▶N.Y. Senate Bill 50002, signed by governor Dec. 9, 2011. [[SP TAXLINK](#)] I1201A-077]

Subsequent Denial Of Empire Zone Breaks Overturned

A 2009 state law revised Empire Zone eligibility criteria and triggered an agency review of all certified business enterprises. After those reviews, a taxpayer's certification was revoked. However, court holds retroactive application of the law changes unconstitutionally deprived the taxpayer of property interests without due process. Decided Nov. 18, 2011. ▶*James Square Associates LP v. Mullen*, N.Y. Supreme Court, Appellate Division, Fourth Judicial Department No. 1211 CA 11-00675. [[SP TAXLINK](#)] I1201A-078]

Hotel Interest Didn't Entitle Business To QEZE Exemption

A taxpayer that acquired a leasehold interest in a hotel was not eligible for a state Qualified Empire Zone Enterprise (QEZE) sales tax exemption. A major hotel chain continued to operate the hotel on the taxpayer's behalf, had control over its management and employed the staff. Thus, the taxpayer's petition for a sales tax refund was denied here. Decided Nov. 23, 2011. ▶*In re: Rochester Hotel TRS Inc.*, N.Y. Tax Appeals Division Determination DTA No. 823344. [[SP TAXLINK](#)] I1201A-079]

Impact Of Film Production Credit Evaluated In State Report

Required annual report is posted evaluating the effectiveness of the Empire State film development tax credit in stimulating growth of the film industry in New York. ▶N.Y. Taxation and Finance Department, "Empire State Film Production Tax Credit Report - December 2011," posted Dec. 14, 2011. [[SP TAXLINK](#)] I1201A-080]

NORTH DAKOTA

Terms Of Housing Fund Contribution Credit Are Improved

The state tax credit rises to 100% of qualifying contributions to the housing incentive fund, from 20% now. The maximum credit possible rises to \$15 million from \$4 million. Effective with two tax years that both start after Dec. 31, 2010. ▶N.D. Senate Bill 2371, signed by governor Nov. 20, 2011. [[SP TAXLINK](#)] I1201A-081]

OHIO

Process For Individual To Take 179 Deduction Explained

Staff gives guidance on the ability of individual taxpayers to take a foregone federal Sect. 179 deduction in a future tax year, given that Ohio has complex requirements for the deduction be taken over a six-year period with a five-sixths addback, but precluding the one-fifth deduction to the degree it results in an NOL carryforward or carryback. ▶Ohio Taxation Department Release, December 2011. [[SP TAXLINK](#)] I1201A-082]

OREGON

Another State Tax Credit Certificate Auction Held

The state held a second auction of tax credit certificates, at starting bids of \$950 for \$1,000 of face value. ▶Ore. Revenue Department Notice, Nov. 29, 2011. [[SP TAXLINK](#)] I1201A-083]

PENNSYLVANIA

Guidance On Restricted Credits, Credit Sales Updated

Bulletin discusses application of restricted credits and requirements for their sale, for several incentives including the R&D, film production, resource enhancement and protection, and Keystone Innovation Zone and Keystone Special Development Zone credits. Topics addressed include application of restricted credits to tax periods, requirements for pass-throughs, and other requirements for sellers. ▶Pa. Revenue Department Corporation Tax Bulletin 2011-03, Nov. 15, 2011. [[SP TAXLINK](#)] I1201A-084]

NMTC Loan Interest Kept From Philadelphia Tax Base

Philadelphia regulations have been amended effective with the 2011 tax year to state that any interest or fees received on loans made under the federal Sect. 45D new markets tax credit program are omitted from the gross receipts portion of the city business privilege tax base. ▶Philadelphia Revenue Department Amended Reg. 302, December 2011. [[SP TAXLINK](#)] I1201A-085]

RHODE ISLAND**Related Entity Payments Are Reduced For Historic Credit**

One foreign LLC, organized in Nevada to hold real estate, paid a related LLC (with the same characteristics) to restore a historic mill in Rhode Island. Payments to a related entity could qualify for the state historic tax credit, as long as they were directly related to a rehabilitation project. However, hearing officer here reduces the mark-up percentage used by the taxpayer to 10% from 29%. ▶R.I. Taxation Division Administrative Hearing Decision No. 11-T-007, posted Dec. 1, 2011. [[SP TAXLINK](#)] I1201A-086]

TEXAS**Combined Group NOL Reporting Obligations Noted**

Franchise taxpayers are reminded that the reporting entity for a combined group that has a temporary credit for business NOL carryforwards must submit common owner information by the report due date each year. Otherwise, the reporting entity's and affiliate members' standings with the Comptroller's Office could be undermined. ▶Texas Comptroller's Office Release, Nov. 28, 2011. [[SP TAXLINK](#)] I1201A-087]

Econ. Development Tax Refund Still Available After Rule Repeal

Repeal of an economic development rule will not affect legitimate claims for franchise, or sales and use, tax refunds in relation to taxes paid before Oct. 1, 2011, in a year during which the taxpayer paid school property taxes before Oct. 1. Effective Dec. 4, 2011. ▶Texas Comptroller's Rule 34 TAC 9.105, repealed Nov. 25, 2011. [[SP TAXLINK](#)] I1201A-088]

Ancillary Activities Cost Wind Farm A Tax Exemption

An LP organized to develop wind farms argued it was eligible for a franchise tax exemption given to corporations solely engaged in manufacturing wind energy devices. However, since the taxpayer also oversaw construction of roads and buildings on its project sites, it was not eligible even though the activity was related to wind farms. ▶Texas Comptroller's Hearing Decision No. 102,945, posted December 2011. [[SP TAXLINK](#)] I1201A-089]

Tax-Exempt Ag/Timber Purchases Need State Number

Utility providers are reminded that claims for state sales tax exemptions for items (including electricity) used in production of agricultural and timber products must have a comptroller-issued registration number on the buyer's exemption certificate, effective Jan. 1, 2012. ▶Texas Comptroller's Office, "Letter to Utility Providers Regarding Sales Tax Exemptions for Ag/Timber Producers." [[SP TAXLINK](#)] I1201A-090]

WASHINGTON**Rejected Certifications For Energy Incentive Appealable**

Excise tax rule on the cost recovery incentive program for renewable energy systems has been updated to note certain rights to appeal a Revenue Department determination. Such a determination would regard revocation or denial of a system certification; or of a module, inverter, blade or other component. Any appeal must be served to the department within 30 days of its decision. Effective Dec. 9, 2011. ▶Wash. Revenue Department Amended Emergency Rule WAC 458-20-273, December 2011. [[SP TAXLINK](#)] I1201A-091]

WEST VIRGINIA**Contractors Can Exempt Purchases For Warehouse Project**

Guidance on which state sales and use tax exemptions a contractor can claim on behalf of a client is updated. It notes a recent amendment from a 2011 bill that lets contractors exempt purchases of property installed or consumed during construction of a warehouse or distribution facility employing at least 300. ▶W.Va. Tax Department Administrative Notice. [[SP TAXLINK](#)] I1201A-092]

Expansions Of Contractor, Distributor Tax Exemptions Reviewed

Notice explains Tax Department's administration of 2007 and 2011 changes by the Legislature regarding sales tax exemptions claimed by construction contractors. Effective July 1, 2007, contractors could avoid sales tax on purchases of services, machinery, supplies and materials to be used directly in manufacturing, transportation, communication and specified other activities. Under a 2011 regulatory amendment, "certified distribution facilities" were added to the list of principals qualifying for a sales tax exemption, which now also applies to their purchases of computers and software, primary materials-handling equipment, racking and racking systems, and distribution facility components. ▶W.Va. Tax Department Administrative Notice 2011-24, November 2011. [[SP TAXLINK](#)] I1201A-093]

WISCONSIN**Conversion Of Staff To Fulltime Brings Tax Deduction**

An employer that changes an employee's status to fulltime from part-time is eligible for a state jobs creation tax deduction on that person, as long as its total fulltime employment increases. The deduction will be based on the increase in the number of FTEs in Wisconsin during a tax year starting in 2011, over FTEs in the state for a tax year starting in 2010. ▶Wis. Revenue Department Notice, Dec. 5, 2011. [[SP TAXLINK](#)] I1201A-094]

Appeals Revisions Address Rulings, Negligence Penalty

Revisions are made to the state's audit and administrative appeals rules and procedures. They address how to get declaratory rulings, a shift in the burden of proof for negligence penalties, and a prohibition of negligence penalties under certain circumstances. ▶Wis. Senate Bill 23, signed by governor Nov. 16, 2011. [[SP TAXLINK](#)] I1201A-095]

More State Money Plowed Into State Jobs Tax Credit

The program cap on the state jobs creation tax credit is doubled to \$10 million, effective retroactively to July 1, 2011. ▶Wis. Assembly Bill 1, signed by governor Dec. 6, 2011. [[SP TAXLINK](#)] I1201A-096]

Revenue Agency Upgrades Web Site For Easier Use

The Revenue Department has reconfigured its Web site to improve navigability and ease of use for taxpayers. ▶Wis. Revenue Department E-Mail, Dec. 5, 2011. [[SP TAXLINK](#)] I1201A-097]

Processes For Relocation, Capital Gains Benefits Cited

A business must move at least 51% of its payroll or \$200,000 of its wages to Wisconsin, and not have done business in the state for the two prior years, in order to qualify for the state business relocation deduction. It needs to initiate contact with a state Economic Development Department regional manager about an appropriate program, in order to apply for a capital gain exclusion or deduction. ▶Wis. Revenue Department Notice, Dec. 5, 2011. [[SP TAXLINK](#)] I1201A-098]

Business Incentive Primer Updated With 2010 Credits

Publication reviewing state business tax credit programs is updated with relevant information about new credits that became available starting with the 2010 tax year. Examples are the jobs, food processing plant/food warehouse investment, woody biomass harvesting and processing, water consumption and post-secondary education credits. ▶Wis. Revenue Department Publication No. 123, revised December 2011. [[SP TAXLINK](#)] I1201A-099]

Can You Live With The Percentage Of Credits A Consulting Firm Will Pocket?

Do you ever get the nagging feeling that the consulting firm your company has hired to process qualifying forms and claims for tax credits may be overcharging, even if it does take on some very undesirable workload? *TIA* asked several tax pros whether they've ever encountered that situation.



David Green, tax director, Ahold USA Inc./Carlisle, Pa.:

We've had consultants who have percentages running maybe 25% to 35% over the life of the incentive, which did not work. Others have flat fees. The people we use most, we give them a percentage – around 20% up to a ceiling of \$50,000 – but those are the more difficult incentives that would require a lot of time to complete in-house. For easier incentives, we wouldn't pay that. We had one case where [a consultant] did an incentive in a very high-cost area, so we had a property tax exemption that was worth a lot. They wanted \$55,000 just to file an application.

Unfortunately, we didn't have a choice in that case, because a subsidiary made the decision and it came to us mid-stride. We wouldn't normally accept that rate. The ones who ask for the most tend to be small outfits who think they can make a killing because they've found a niche credit. They'll ask for between 30 and 40% of the incentive for each year!

The old shtick about, 'You have to use consultants because they're local and know the local politicians,' that's simply not true. We know them. I've been doing this for 40 years! I know them, too. We would only pay that high a rate if we didn't have the local knowledge.



Claude Phenix, tax director, Papa John's International Inc./Louisville, Ky.:

Well, certainly from a WOTC standpoint, there's no way that anyone could take that in-house, in my opinion, for the amount that the different firms charge. I've talked to a number of firms, and they're basically in the same percentage range of fees for the WOTC service. No way we could do it in-house for less money. I think it's well worth the going rate, and it's so competitive in that industry that the price range is amazingly consistent. I've seen the range as 10% to 20% of credits earned. I've been surprised actually; I don't know if they somehow find out what the other guys charge, but it's all in that same range. The larger or more desperate they are to get your business, the more likely they are to push the fee.



Neil Wieschaus, senior manager of indirect taxes and incentives, Emerson Electric Co./St. Louis:

There's enough money in incentives that you don't really have to look at

cost. It's more what they can offer you. So, we've never had a proposal that we thought was unreasonable. We use [consultants] but we use them more for the discretionary incentives as opposed to the statutory incentives. Those are handled as part of our normal compliance. We also use a consultant for our jobs credits and for the WOTC credit.

When we hired our current consultant, we talked to all the big firms and tried to see who had specific knowledge in the state where we use credits, who has relationships with the directors of economic development and other people in the jurisdiction. It's not driven by cost.



National tax director in the Texas office of a large beverage company:

Unfortunately for us, it was a case where we didn't realize the 'ask' was too high until after the fact. We took the bad deal. We had an incentive for jobs creation and investment in a particular jurisdiction, and we had a consultant come on to handle the compliance. We signed up to give them a percentage over the term. That turned out to be a very lucrative incentive because we created a good deal of jobs, and the consultant raked it in. I think it was something like 25%, and it really cost us. Compared with how much work they did – which was really just tracking the jobs, negotiating with the jurisdiction – I'm not sure they really earned their keep. **T**

Get Instant Delivery — Avoid Mail Delays!

Get all of your need-to-know information electronically – it's fast and reliable! For an additional \$50, *Tax Incentives Alert* can be delivered directly to your e-mail inbox, and you'll continue to receive a copy in the mail!



Tax Incentives Alert subscriptions are available in print, electronic, or print/ electronic combination – INQUIRE TODAY!

For pricing, to order, or to convert your subscription – contact us today at:

Phone: (800) 926-7926, ext. 10
Email: custserv@straffordpub.com
Fax: (404) 881-0074

Subscribe To Tax Incentives Alert

Please enter my _____ year subscription to Tax Incentives Alert.

Check enclosed payable to Strafford Publications (1-year: \$467+\$14.95 S&H; 2-year: \$834+\$29.90 S&H).

Charge VISA / MC / AMEX / DISCOVER

Card # _____ Exp. _____ Signature _____

Name _____ Title _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone _____ FAX _____



Mail to: Strafford Publications, Inc.
 P.O. Box 13729
 Atlanta, GA 30324-0729

Call: (800) 926-7926 **Fax:** (404) 881-0074
E-mail: custserv@straffordpub.com
Website: www.straffordpub.com

TIPQIB