



## ***Evaluating and Negotiating Incentives***

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## **WHO SAID IT?**

1. Money is not the only answer, but it makes a difference.
2. Now you have a choice; we can give more tax breaks to corporations that ship jobs overseas, or we can start rewarding companies that open new plants and train new workers and create new jobs here, in the United States of America.
3. "I know that there are those who disagree with the overwhelming scientific evidence on climate change. But here's the thing. Even if you doubt the evidence, providing incentives for energy efficiency and clean energy are the right thing to do for our future, because the nation that leads the clean-energy economy will be the nation that leads the global economy, and America must be that nation."



## WHO SAID IT?

1. Tax breaks serve a vital role in keeping and bringing jobs to our state; however, without accountability, they are little more than loopholes at taxpayers' expense.
2. .... you know one of the things that will be a real achievement for me is when I get Apple to build a big plant in the United States,.... I think we'll create the incentives for you, and I think you're going to do it. We're going for a very large tax cut for corporations, which you'll be happy about...



## ***AGENDA***

- **Trends**
- **Incentive Sweet Spot**
- **Traditional Incentives**
- **Incentives for new development**
- **Best Practices**
- **Creative Financing**
  - NTMC
  - R&D



## TRENDS

### » Trends

- Significant Capital investment projects
  - Data Centers
  - Manufacturing
- Foreign
  - Foreign Direct Investment
  - Impact of Foreign economies to US based companies
    - » *Construction*
    - » *Mining*
- Trump Factor
  - Military Spend
  - Mexico



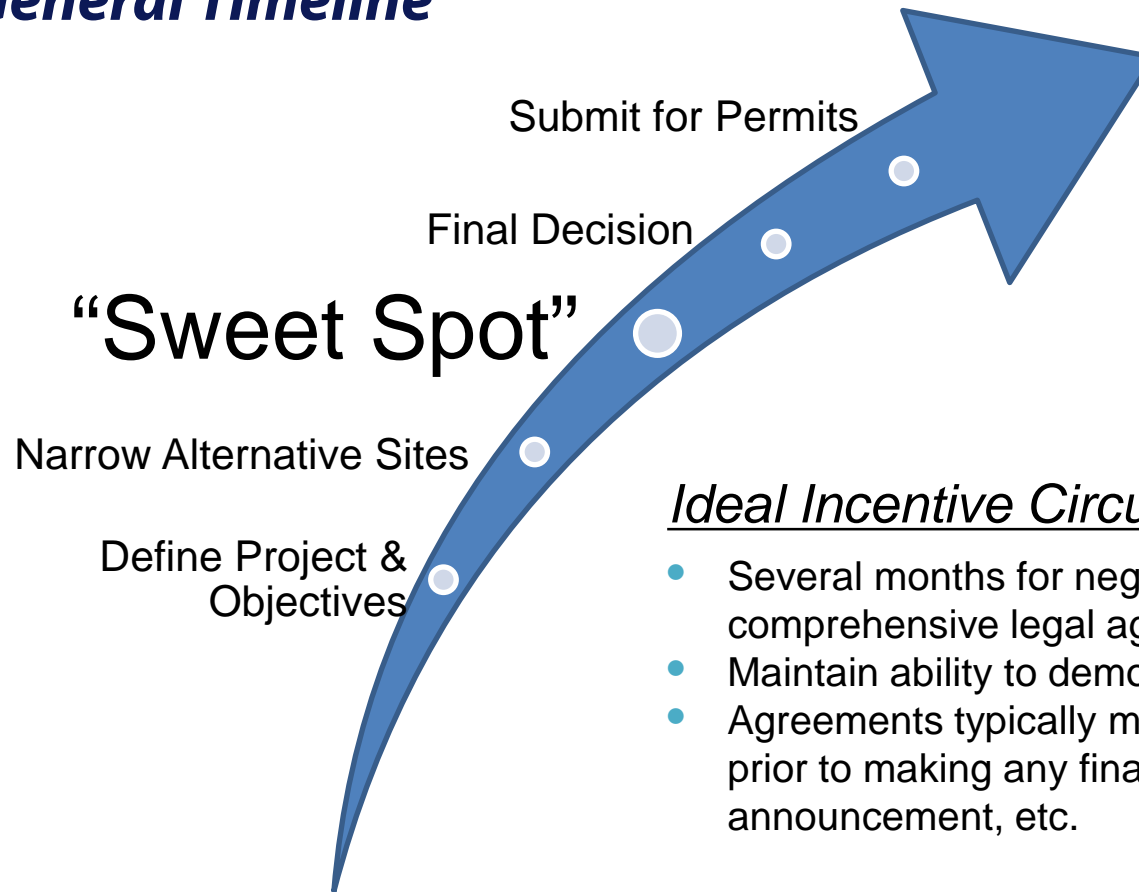
## ***TRENDS***

- **Shifting from Northeast to Southeast**
- **Scrutiny of public incentives**
- **“Pay As You Go”**
- **State Economic Development Restructuring**



## The Incentive “Sweet Spot”

### General Timeline



### Ideal Incentive Circumstances:

- Several months for negotiation and finalization of comprehensive legal agreements for incentive.
- Maintain ability to demonstrate “but for” requirement
- Agreements typically must be executed by all parties prior to making any final decision, public announcement, etc.



## ***Traditional Incentives- Types of Credits and Incentives***

- **Statutory** - An incentive is granted to all applicants provided they meet eligibility requirements of the program and funding is still available for the program.
- **Discretionary/Negotiated** – An incentive is granted based on the discretion of the governing jurisdiction.





## ***Incentives for new development***

### **➤ *Property Tax Abatements/Incentives***

- Full or partial exemption from ad valorem taxes of certain real or business personal property in a reinvestment zone.
- Abatements are determined by the local jurisdiction.
- Potential benefit is 100% abated for 10 years on the incremental increase to the tax rolls.
- Some incentives are through the Industrial Revenue Board whereas they hold title to the property for property tax purposes
- Some property tax incentives are structured as rebates of property taxes paid.



## ***Incentives for new development***

### **➤ *Property Tax Abatements/Incentives***

- Question – Are all property tax abatements created equal?
  - 50% abatement in New York
  - Vs
  - 100% abatement in Georgia



## ***Incentives for new development***

### **» Sales Tax**

- Exemptions – (statutory, enterprise zone)
- Sharing – partial refund of local sales tax collected from sales generated by new development.
  - » *Refunded over a certain number of years and/or*
  - » *Refunded up to an agreed upon dollar amount.*
- Rebates – refund of state and/or local sales taxes paid on:
  - » *Construction materials*
  - » *Furniture*
  - » *Fixtures*
  - » *Equipment*



## ***Incentives for new development***

### **» Cash Grants**

- Financial assistance is provided to offset a portion of the project's development costs.
- Very flexible, negotiated payment terms – can be paid upon opening or paid ratably over a period of years on the anniversary date of opening.
- Can be offered with or without restrictions on expenses eligible to be offset by grant funding.



## *Incentives for new development*

### **➤ Tax Credits/Rebates**

- Full or partial rebate of amounts paid over a statutory (or negotiated) period of years are available for a number of various types of locally imposed taxes:
  - Local gross receipts taxes
  - Local business and occupation taxes
  - Local meals taxes
  - Local Occupancy
- Rebates typically occur in arrears – taxes are paid when due and reimbursed by the taxing authority at the end of each year.
- Credits are typically applied when return/payment is due.



## *Incentives for new development*

### ➤ **Infrastructure Improvements**

- Local jurisdiction will provide certain types of infrastructure improvements as a benefit to the “public purpose” (i.e. paving, demolition, sidewalks, demolition of vacant building, etc).
- Typically, an easier approval mechanism within the local government, requiring few or no public hearings/approvals; whereas an “incentive” will normally require public hearings and formal written agreements.
- Can also negotiate reduction or abatement of permitting, impact, and utility connection fees.
- Can also negotiate expedited permitting even when no formal program exists.



## ***BEST PRACTICES***

- **Check your address for special enterprise zone or other location-based status.**
- **Research all available incentives in target area(s) in advance of investments. Determine which incentives are of value to your company.**
- **Do not begin investment prior to understanding pre-application requirements.**
- **Have accurate estimates of investments and HC plans for the entire project cycle**
- **Do not overestimate investments for a larger offer. Awards are often performance-based and failure to meet contracted levels may lead to recapture and penalties.**



## ***BEST PRACTICES***

- **Prepare responses to any negative company history.**
- **Present a thorough introduction to your company and the project to the jurisdictions.**
- **Company history – in general and as a community member.**
- **Project description – demonstrate fit within the company's business plan.**
- **Use detailed presentation materials to help visualize the project.**
- **Introduce site options for the project.**
- **Identify support options being requested.**
- **Identify & notify key company participants.**





## ***BEST PRACTICES***

- **Estimate economic impact**
- **Begin discussions and submit support applications to jurisdictions as early as possible.**
- **Conduct meetings in person, utilize local contracts (e.g. plant manager)**
- **Benchmark other award packages to establish a baseline comparison.**
- **Establish procedures for substantiation / documentation in self-reporting regimes.**
- **Calendar reporting and filing deadlines to avoid recapture or loss of benefits.**



## ***BEST PRACTICES – What not to do***

- **Forget to investigate incentives for your investments**
- **Announce plans prior to execution of final agreements**
- **Forget to include all key players in the negotiations**
- **Overestimate investment and HC figures to obtain a “better” package**
- **Performance-based awards**
- **Recapture**
- **File for permits (construction, environmental, etc.) before an award is executed**
- **Don't forget about utility incentives**



## ***Lessons Learned***

- **Make sure to get the reward in writing**
- **Nurture relationships both internally and externally**
- **Communication is key**
- **Have an “ASK” and be creative with the “ASK”**
- **Make it easy to say “yes” by summarizing economic impact**
- **Answer hard questions internally first**
- **Have a clear understanding of compliance and documentation required**



## ***New Markets Tax Credits Overview***

- **Enacted in 2000 to help spur economic and community development with job creation in a Low-Income Community (“LIC”)**
- **Provides federal income tax credits to investors that make a Qualified Equity Investment (“QEI”) into a Community Development Entity (“CDE”)**
  - A CDE is an intermediary vehicle for the issuance of loans and investments, or financial counseling in a LIC.
  - NMTC allocation authority is only awarded to CDEs
- **Recently extended through 2019**
- **2015/2016 \$7B in allocation recently announced**
- **Must be qualified site - <https://www.novoco.com/resource-centers/new-markets-tax-credits/data-tools/nmtc-mapping-tool>**



## ***Who Qualifies for NMTC Financing?***

### **➤ Qualified Active Low-Income Community Business**

- A business (profit or not for profit) that develops or rehabilitates:
  - commercial, industrial, retail and mixed-use real estate projects in a LIC
  - community facilities, such as charter schools or health care centers in a LIC
  - for-sale housing units located in LIC

### **➤ Qualified Projects**

- Asset Purchases – large capital expenditures for assets used in the business that will typically result in creation of jobs or retention of jobs
- Development – new development or expansion of real estate
- Ongoing Business Operations – i.e. inventory, operating supplies, etc.
- Combination of one or more of the above



## ***NMTC Benefits***

- **Through a financing structure it provides upfront cash that can be used for:**
  - New development
  - Expansions
  - Everyday capital expenditures
  - Operating expenses
- **Provides an estimated 15%-20% pre-tax reduction in an investment**
- **Multiple projects in qualified census tracts can be combined to increase the benefit**
- **At the end of the day through the exercise of a put option, you may have the opportunity to purchase your debt for pennies on the dollar (generally \$1,000).**



## ***Estimated Benefit: \$10M Project Investment***

Total Project Investment:		\$10,000,000
NMTC Generated:		\$ 3,900,000
NMTC Equity (\$.85 discount rate) :		\$ 3,315,000
Leveraged Lender Investment:		\$ 6,685,000
 <i>Less <u>Estimated Fees</u>*</i> :		
CDE Project Fees (5%)		(\$ 500,000)
Closing Costs:		
Legal Fees		(\$ 175,000) *between 150-250K, driven by deal complexity
Financial Projections		<u>(\$ 30,000)</u> *between 25-35K, driven by deal complexity
 Estimated Upfront Fees		 <u>(\$ 705,000)</u>
Loan Proceeds Net of Fees		\$ 2,610,000 (received on day of closing if no reserve)
 7 Years Worth of B Loan Interest Payments :		 (\$ 510,000) (paid over 7 years)
Put Option (if exercised):		<u>(\$ 1,000)</u>
Total Estimated Benefit Before Tax if Put Option Exercised**:		\$2,099,000 (\$2,100,000 received on day of closing if reserve)

\*Assumptions: CDE Project Fee is estimated at 5% but can vary by CDE; Legal Fees are estimated based upon recent closing; Financial Projections are done by a 3<sup>rd</sup> party accounting firm; Asset Management Fee is estimated at 3.5% total over 7 years; Tax & Audit Fee is based on 8 years of T&A at \$10,000 annually at both the Sub-CDE and Investment Fund level – this may vary by CDE and Investor; Put Option is estimated at \$1,000 – this may vary by CDE. Interest Payments may be held in reserve at closing – varies by CDE. Assumptions are based on a recent deal.

\*\*Estimated Benefit: Ignores PV of compliance fees (interest), Put Option, depreciation, interest expense deduction, and Ryan consulting fees

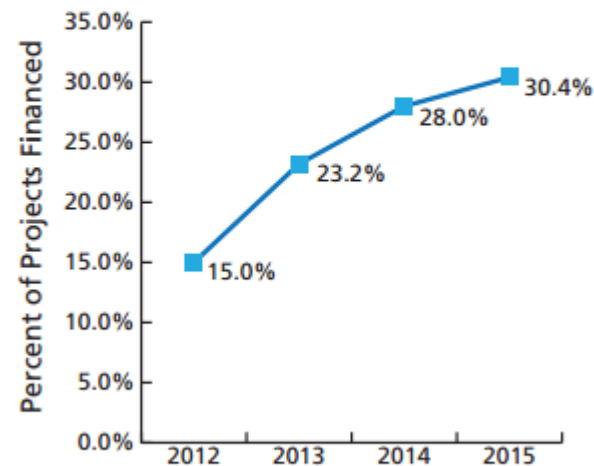


## ***NMTC and Manufacturing***

- **For the second straight year, manufacturing and industrial projects (including food manufacturing) were the most common projects financed, accounting for 30.4 percent of all projects**

**Chart 3: NMTC Industry Trends**

**2012 – 2015 Manufacturing and Industrial Businesses**



Source: New Markets Tax Credit Coalition, survey of NMTC allocatee activity January 1, 2012 – December 31, 2015





## ***NMTC Complexity***

- **Several parties (internal and external) are involved in the transaction.**
- **Allocation needs to be identified and secured**
- **Negotiations for credit price and agreements**
- **Multiple meetings to coordinate**



## ***Research and Development Credit Basics***

- **Credit for Increasing Research Activities: I.R.C. § 41 et seq.**
- **Commonly Known as the Research and Development (R&D) or Research & Experimentation (R&E) Tax Credit**
- **Approximately \$8.5 Billion in Federal R&E Credits Awarded Annually**
  - 40 States (e.g. California, Massachusetts, Ohio, Pennsylvania, Texas)
- **Qualified Activities Include:**
  - Product Development / Improvement
  - Process Development / Improvement
  - Software Development for External and Internal Use

# Research and Development Credit Basics



Industry	Number of Returns	R&E Credits Claimed (\$1000s)
All Sectors	15,873	10,842,567
Manufacturing	6,219	6,594,799
Professional, Scientific, and Technical Services	5,280	1,126,862
Information	1,583	1,747,717
Wholesale and Retail Trade	1,071	769,282
Management of Companies (holding companies)	403	85,180
Finance and Insurance	304	226,544
Various Services	278	35,263
Construction	240	24,074
Administrative/Support and Waste Management Services	148	44,822
Real Estate, Rental, and Leasing	82	28,087
Mining	81	79,614
Utilities	67	51,640
Agriculture, Forestry, Fishing, and Hunting	59	8,239
Transportation and Warehousing	58	20,444



## ***Research and Development Credit Basics***

- ▶ **The Protecting Americans From Tax Hikes (PATH) Act of 2015 was signed into law by the President on December 18, 2015 providing:**
  - The research credit is permanent for qualified research expenses paid or incurred after December 31, 2014.
  - For eligible small businesses, the research credit can be used to offset AMT liability.
  - Qualified Small Businesses can utilize the research credit to offset OASDI payroll taxes



## ***Research and Development Credit Basics***

### **➤ Federal Credit Rate of Up To 20% of Qualified Expense Increase In:**

- Wages
- Supplies
- Contract Research

### **➤ Simplified Credit at 14% May be Taken on Original and Amended Returns**

### **➤ Available on Any Open Tax Return**

- Can Be Carried Back 1 Year and Forward 20 Years



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