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Tax Credits: Endangered but Not Extinct

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During a legislative season marked by state budget shortfalls and declining receipts, businesses have seen some sharp increases corporate tax rates, new limitations on use of state net operating loss (NOL) carryovers, and a number of proposals to suspend NOLs or eliminated corporate tax credits. Some states have taken a different approach, enacting tax credits to aid business and promote growth in these tough economic times.

Notably, several states have adopted energy-related tax credits. Wisconsin enacted two laws creating tax credits for businesses relocating to the state and decreasing the tax burdens on small businesses. The list below, while not exhaustive, highlights some of the major tax credit legislation enacted so far in 2011.

Energy Tax Credits

Georgia HB 346 extends the cutoff date for the tax credit for the construction, purchase, or lease of clean energy property from December 31, 2012, to December 31, 2014. Taxpayers may earn a credit of up to $5 million in tax years 2012–2014. Credits earned from property put into service between 2012 and 2014 must be taken in four equal installments over four years, beginning with the year the credit was earned.

Nebraska LB 360 provides a renewable-energy tax credit for utilities producing electricity in new renewable-energy facilities. Qualifying facilities must have been placed into service after July 2006 and must produce electricity by means of wind, water, sunlight, geothermal energy, fuel cells, methane gas, or photovoltaics exclusively. The renewable-energy credit may be used for income tax liability or sales and use tax refunds. The new law also modifies existing legislation to provide a tax exemption on any depreciable tangible personal property used in wind-powered electricity generation.

New Mexico HB 440 provides an advanced energy tax deduction for receipts from selling or leasing to an interest holder in a qualified electric generating facility tangible personal property or services that are eligible plant generation costs. The deduction is limited to $60 million per qualified facility and is available for 10 years for purchases and 25 years for leases from the year the development and expenses begin. Qualified facilities include solar thermal, solar photovoltaic, geothermal, and recycled energy facilities or new or repowered coal-based electric generating facilities.

Under **North Dakota HB 1071**, agricultural land that is put to use for the extraction of oil, natural gas, or other subsurface minerals will retain its tax status as agricultural property if the surface owner's remaining property continues to qualify for assessment as agricultural property as defined by the statute.

North Dakota SB 2336 provides a limited sales tax exemption for the sale of machinery or equipment used to produce coal from a new mine within North Dakota. The exemption is limited to the first $5 million of sales and use tax paid; to qualify, a mine cannot have been permitted prior to January 1, 2011. "Machinery or equipment" includes any machinery or equipment used to uncover, sever, crush, handle, or transport coal removed from the earth.

Oklahoma SB 885 establishes a tax reduction for qualifying horizontally drilled wells producing oil and/or gas. Qualified wells commencing production on or after July 1, 2011, are taxed at the rate of 1 percent for the first 48 months of production. Wells qualifying for the exemption prior to July 1, 2011, are taxed at 1 percent beginning on July 1, 2011, for 48 months from the initial production date.

Oklahoma HB 1815 lowers the nominal rate of motor fuel taxation for compressed natural gas from that of gasoline ($0.16 per gallon) to that of diesel fuel ($0.13 per gallon or gasoline gallons equivalent (gge)). The new law further lowers the taxation rate for compressed natural gas to $0.05 per gge for a period of time to allow for the development of compressed natural gas distribution systems; the current rate is set to expire on January 1, 2015.

Utah HB 184 modifies the Motor and Special Fuel Tax Act by including liquefied natural gas within the definition of "clean fuel" and reduces the tax rate on liquefied natural gas to $0.085 per gge. Classifying liquefied natural gas as a "clean fuel" provides it with additional exemptions for nonhighway uses, exportation, or sales to Utah or the U.S. government.

Utah SB 226 amends the eligibility requirements for the cleaner-burning fuels tax credits available for personal income taxes and corporate franchise and income taxes. The legislation provides tax credits for the purchase of vehicles that meet air quality and fuel economy standards, are fueled by compressed natural gas, or are converted to clean-burning fuels. The new law also allows for credits for new, qualified plug-in electric drive motor vehicles.

Virginia SB 1111 provides a tax credit of $3 for each ton of coal purchased and consumed by a qualifying electricity generator within Virginia. To qualify, the coal must be certified by the seller as having been mined in Virginia. The tax credit may not exceed the total amount of tax liability but may be carried over to the following year for up to 10 succeeding years.

General Business Tax Credits

Idaho H 297 grants employers tax credits for placing new employees in positions providing health-care benefits. To be eligible for the credit, the company must meet salary requirements, which vary according to the location of the position. The amount of the refundable income tax credit, which is based on how each employer is rated by the Department of Labor for payment of unemployment insurance taxes, ranges from 2 to 6 percent.

Ohio HB 58 creates a nonrefundable credit for any business with at least 1,000 full-time employees if the business makes a capital investment of at least $25 million at the project site over the course of three years and if the business received a written offer of financial incentives from another state in 2010.

Virginia SB 1335 and HB 2197 provide employers income tax credits of $1,200 per employee allowed to telework pursuant to a signed telework agreement for tax years 2012 and 2013.

Wisconsin AB 3 creates a two-year nonrefundable income and franchise tax credit for businesses that relocate to Wisconsin. The credit is equal to the amount of the taxpayer's income or franchise tax liability after all other credits, deductions, and exclusions have been applied.

Wisconsin AB 7 creates an income and franchise tax credit for small businesses with annual gross receipts of up to $500,000. Any business with less than $250,000 in gross receipts per year is eligible for a credit equal to 15 percent of its tax liability. For a business with income between $250,000 and $500,000, the amount of the credit is based on the amount of the business's receipts exceeding $250,000.

Transportation Tax Credits

Georgia HB 234 extends to June 30, 2013, the sales tax exemption for the sale of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft; the exemption had been set to expire on June 30, 2011.

New Mexico SB 179 provides a deduction from gross receipts and compensating tax for the value of fuel loaded or used by a common carrier in a locomotive engine. To be eligible for the tax credit, the sale must be made to a common carrier that, after July 1, 2011, makes a capital investment of $100 million or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold.

Virginia SB 1136 grants an income tax credit of $3,000 for every employee hired by Virginia shippers as a result of increased cargo moving through Virginia or 2 percent of any capital investment made by a Virginia shipper to facilitate the movement of cargo through the state.

Virginia SB 1282 and HB 2385 grant an income tax credit of $25 for each TEU transported by barge and rail rather than by truck.

Virginia SB 1481 and HB 2531 create an income tax credit for manufacturers and distributors that use Virginia port facilities and increase port cargo volume by 5 percent in a single year over base-year port cargo volume. The tax credit is equal to $50 for each TEU above base-year port cargo volume, with a maximum of $250,000 annually.

Tourism-Related Tax Credits

Arkansas HB 1421 extends the applicability, length, and limit of the Delta Geotourism Incentive Act. A credit equal to 25 percent of a taxpayer's annual investment in a geotourism-supporting business can now be claimed for a site within 30 miles of a national scenic byway (previously five miles), and the period of eligibility has been extended to 2021 from 2016, with the cap increased to $250,000 per year from $100,000.

Georgia HB 234 allows any business that operates a tourist attraction in the state to retain the incremental sales tax earned from sales at the attraction. "Incremental sales tax" is defined as state and local sales and use taxes generated by the attraction above the amount of such sales and use taxes generated by the previous use of the property.

Virginia HB 2285 entitles certain tourism projects to 1 percent of the state and 1 percent of the local sales tax revenues generated on the project premises for use in reducing debt on the project. To qualify, projects must have at least 80 percent of the funding for the project in place.

Real Estate and Construction-Related Tax Credits

Arkansas HB 1118 creates an investment tax credit for expenses related to qualified rehabilitation or development projects in eligible central business improvement districts. The investment tax credit is equal to 25 percent of qualified rehabilitation or development expenditures incurred for a qualified project, up to the first $500,000 on income-producing property or $200,000 on non-income-producing property.

Georgia HB 346 allows taxpayers to sell unused tax credits earned through donations of real property for conservation purposes, provided that the seller notifies the Department of Revenue within 30 days of the sale.

Indiana HB 1046 provides builders of residential homes a 50 percent property tax deduction for up to three single-family residences, townhouses, or condominiums in the state that have never been occupied.

Technology Tax Credits

For fiscal years 2012 and 2013, **Maryland HB 587** extends application of the state's biotechnology investment incentive tax credit to investments in qualified Maryland biotech companies that have been in business up to 15 years. For all other years, only investments in companies in business 12 years or less have been eligible for the credit, which comprises up to 50 percent of the investment, with a maximum credit of $250,000.

New Mexico HB 273 reinstates the research and development small-business tax credit that had expired on June 30, 2009. Effective from July 1, 2011, until June 30, 2015, the law gives qualified research and development small businesses a credit equal to all gross-receipts taxes or 50 percent of withholding taxes paid on behalf of employees. To be eligible for the credit, a business must devote at least 20 percent of its expenditures to research and development, have 25 or fewer full-time employees, and have revenue of no more than $5 million.

Utah HB 496 provides income tax credits to businesses classified as technology and life-science companies by the North American Industry Classification System.

Virginia SB 1326 and HB 1447 enact a 15 percent income tax credit for qualified research and development expenses for taxable years 2012–2016.

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