Credits and Incentives Briefing

A global and domestic credits and incentives network publication

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Dear Clients and Alumni,

With the extraordinary events recently striking the capital markets, businesses are pondering the overall impact these developments will have on our economy as well as the credits and incentives landscape. Despite the many uncertainties in the marketplace, the PwC credits and incentives practice continues to be very busy working on significant transactions, both on the domestic and foreign fronts. It is clear that underlying all this turmoil, companies - regardless of industry or sector - continue to demand quality real estate for their operations. Our incentives practice has not experienced this level of requests for assistance in over five years. With respect to tax credits, we fully expect to see another round of targeted tax credits to induce hiring.

In the midst of all this activity, our global and domestic credits and incentives network met late last month for a two and a half day meeting to discuss opportunities we are creating for our clients. At the conclusion of the event, we all walked away agreeing on two important principles: we are focused on delivering exceptional value and service to our clients, and we enjoy what we do for our clients every day. While we currently may not be the largest practice, we continue to build an expansive team of professionals who are focused on results, work diligently and are always looking to create new value-added benefits for our clients.

In this briefing we focus on legislative activity impacting the tax credits and incentives arena and highlight an often overlooked opportunity for our clients in Oklahoma.

We continue to welcome your thoughts and input on any area that may be of interest to you or your company.

Regards,
Kenneth M. Hunter
National Leader - Global and Domestic Credits and Incentives Network

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MAINE

New Markets Capital Investment Program Encourages Investment in Economically-Distressed Communities

Enacted legislation establishes the Maine New Markets Capital Investment Program to encourage investments in economically distressed areas in the state. The state program, which mirrors certain provisions of the federal New Markets Credit Program, provides a tax credit for investments in qualified community development entities, which act as the vehicle for capital and equity investments in low-income community businesses. The state program applies to tax years beginning on or after January 1, 2012. [L.D. 1043, enacted 6/20/11]

Background. The federal New Markets Tax Credit (NMTC) program, set forth under I.R.C. Sec. 45D, was established in 2000 as a catalyst for economic and community development and job creation in underserved communities. The federal tax program provides an incentive in the form of a tax credit to qualified taxpayers that make capital investments in qualified projects in low-income areas. The federal credit equals 39 percent of the amount invested in a qualified community development entity (CDE).

In general, NMTC transactions utilize two general structures: the direct investment model or the leveraged investment model. Under the direct investment model, an investor generally partners with a local CDE that has received a NMTC allocation from the federal government. The funds invested by the investor into the CDE are in turn invested by the CDE in qualified active low-income businesses, or QALICBs, in the form of grants, equity or low interest loans. The second model, commonly referred to as the leveraged investment model, utilizes an investment conduit – formed as a limited liability company – that is owned by an equity investor. The investor invests its equity in the LLC and typically the LLC also receives a leveraged loan from a 3rd party. As in the direct investment model, the LLC then partners with a local CDE that has received a NMTC allocation from the federal government and the funds from both the investor's equity investment and the LLC's leveraged loan are in turn invested in the CDE, and the LLC becomes the investor in the CDE. The funds invested by the LLC in the CDE are then invested by the CDE in QALICBs in the form of grants, equity or low interest loans. In both models, the investor that invests funds in the CDE is entitled to the federal tax credit, worth 39 percent of the total investment in the CDE, which is taken over seven years - five percent in years one to three and six percent in years four through seven.

To continue to qualify under the federal program, a CDE must invest substantially all (i.e., more than 85 percent) of its funds in qualified low-income community investments in qualified active low-income community businesses located within qualified low-income communities and the investment must remain in place for a minimum of seven years.

The federal program, which has consistently had bi-partisan support, has received varying levels of funding since inception. In 2010, the federal program received funding of $7 billion in tax credit allocation authority for 2010 and 2011. More recent federal proposals would continue funding the federal program.

Maine Program Components. Taxpayers that make qualified investments may claim a tax credit equal to 39 percent of amount paid to a state CDE for a qualified equity investment. The statute authorizes taxpayers to claim the tax credit over a seven year period; however, because a zero percent tax credit rate applies in the first two tax years, the tax credit is effectively claimed over a five year period beginning in year three. The rates during the five year tax credit claim period equal seven percent of the qualified investment in year three, and eight percent in year four through year seven. Tax credits in excess of tax liability may be carried over for 20 years. The enacting statute provides that the tax credit is fully refundable.

The state program authorizes $250 million in qualified equity investments for the initial seven-year period beginning in 2012, and caps at $20 million the amount of tax credit claim allowed in any one year of the seven-year period.

The enacting legislation states a clear intention that investors making qualified investments be entitled to realize the full amount of expected tax credits, without fear of impairment by a subsequent law change. Accordingly, the enacting legislation directs the Legislature to ensure that promised tax credits will be available for a period of seven years following the date of each qualified investment, and that all successor Legislatures honor the commitments made in enacting the Maine New Markets Capital Investment Program.

PwC Observes: "The state program provides a substantial incentive to investors looking to invest in underserved communities and builds upon the $172 million federal new markets tax credit allocation granted for development in Maine as part of the 2010 federal new markets tax credit program allocation," says Myriam Simmons, State Tax Credits and Incentives Director with PwC in Stamford.

Businesses familiar with the federal New Markets Tax Credit program and similar programs offered in other states will be at an advantage in understanding the new Maine program. That said, taxpayers should be aware of differences in the Maine program. Most notably, while the federal tax credit can be claimed in each and every year of the seven year tax credit period, at the rate of five percent in the first three tax years, and six percent in the remaining four tax years, the Maine program requires investors to wait until the third tax year before claiming tax credits. Accordingly, while the Maine program is somewhat less favorable than the federal program, from a cash flow standpoint, the program is more favorable, in some respects, than the Mississippi new markets tax credit program, which caps the tax credit at 24 percent. Interestingly, the Maine tax credit period and rates mirror those of the Florida, Kentucky and Ohio new markets tax credit programs.

For additional reading on the New Markets Tax Credit, please see the May 2011 Credits and Incentives Briefing.

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OHIO

Enacted Legislation Reinvigorates Job Retention Tax Credit Program

Updated credit provisions acknowledge the changing business landscape.

Enacted legislation authorizes the Ohio Job Tax Credit Authority ("Authority") to grant a new refundable job retention tax credit to any business that meets stated employment and capital investment thresholds. In addition, the legislation expands existing nonrefundable job retention tax credit provisions to allow the Authority to award tax credits to businesses based on a combination of threshold levels of employment and compensation or a threshold level of compensation, rather than a threshold level of employment. Am. Sub. H.B. 153, enacted 6/30/11

To qualify for the newly enacted refundable tax credit, a business must have annual compensation of at least $20 million at the time it enters into a tax credit agreement with the Authority. In addition, the business must agree to make at least $5 million in capital investments at an Ohio project site within three years of the date on which the tax credit is granted. The business must also agree to retain at least 500 full-time equivalent employees at the Ohio project site and maintain an annual payroll of at least $20 million for the entire term of the tax credit. Alternatively, a business can qualify for the tax credit if it agrees to make the required capital investments and maintain an annual payroll of at least $35 million for the entire term of the tax credit.

The newly enacted tax credit, which is available for a period of up to 15 years, equals a percentage of personal income taxes withheld on wages paid to employees working at a qualifying project. The tax credit duration and percentage are determined by the Authority, in conjunction with related agencies, and are generally based on agreed-to levels of employment and investment within the state.

The legislation also modifies a provision dealing with the nonrefundable jobs tax credit to allow a business the option of meeting the job retention threshold based on employment or compensation. Specifically, the legislation provides that a business will meet the job retention threshold if it retains at least 500 full-time equivalent employees at a project site or maintains an annual payroll of at least $35 million for the entire term of the tax credit. Prior to amendment, taxpayers were bound by the employment threshold requirements.

PwC Observes: "The recent amendments breathe new life into the jobs retention tax credit program," says Pete Turner, State Tax Credits and Incentives Director, with PwC in Columbus. "More importantly, because the tax credit is available to a wider array of businesses, the changes will hopefully encourage economic development across a number of industry sectors."

When originally enacted, the jobs retention tax credit program provided Ohio the economic incentives necessary to grow a strong manufacturing business sector, Turner explains. However, as manufacturing declined in Ohio and other states in recent years, the program was underutilized by taxpayers. Just as importantly, because the program focused state resources on a narrow sector of the economy, the state was unable to channel economic development resources to other sectors.

Businesses should take note of the important program components, Turner advises. Importantly, the key aspects worth emphasizing include the fact that the jobs tax retention credit now is refundable. In addition, taxpayers should note that the capital investment threshold has been lowered to $5 million, regardless of industry or type of business involved. Importantly, the changes provide a business the option of committing to retaining 500 employees and maintaining an annual payroll of $20 million *or* maintaining an annual payroll of $35 million.

While the amendments make welcome changes, taxpayers should be aware an important program criteria, i.e., that the designated project be located in the political subdivision in which the applicant has its principle place of business.

"One more item of note – the tax credit currently is set to sunset on December 31, 2013," says Turner. "Accordingly, taxpayers will need to act fast to take advantage of the new provisions."

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OKLAHOMA

The Investment/New Jobs Tax Credit – The Credit that Keeps on Going

A unique opportunity for qualifying taxpayers.

Oklahoma offers a variety of tax benefits and incentives to businesses that begin or expand operations in the state. The benefits range from industry specific tax credits to broad based incentives that encourage investments in clean technologies and environmental facilities.

One popular - but often underutilized - industry-specific incentive is the Investment/ New Jobs Tax Credit available to businesses engaged in general manufacturing, aircraft manufacturing and maintenance operations, or web-search portal establishments.

The investment tax credit applies to investments in qualified depreciable property used in a qualifying activity at a qualifying facility in the state. The tax credit, which equals one percent of investments in qualified property in any year, is claimed in the year the investment is made and the four subsequent years. A taxpayer must invest in excess of $50,000 in qualified property in a tax year to claim the credit.

The jobs tax credit, which equals $500 per each net new full-time equivalent job, is claimed in the year an individual is hired and in each of the four subsequent years, provided the level of new employment is maintained during the period.

The investment and jobs tax credit percentages double if a taxpayer invests at least $40 million in qualified property over a three year period, or if the facility is located in a designated enterprise zone.

Taxpayers compute the tax credit based on investment and new jobs, and claim the tax credit based on the greater of the two computations. Available tax credits in excess of taxable income can be carried forward indefinitely.

Qualified depreciable property generally includes machinery, fixtures, equipment, buildings, or substantial improvements placed in service during the taxable year. In addition, qualified property includes expenditures made for repair, construction, and capital improvements to manufacturing facilities, provided the repairs stop deterioration and prolong the life of the property. In general, qualified expenditures do not include expenditures that keep property operating in an efficient operating condition. Importantly, investments that directly cause a decrease in the number of full–time equivalent employees do not qualify for the tax credit.

Taxpayers claiming the Investment/New Jobs Tax Credit are prohibited from claiming benefits under the Oklahoma Quality Jobs Program and certain other programs.

PwC Observes: The investment tax credit is effectively a five percent tax credit that taxpayers claim ratably over a five year period, explains Monte Moore, SALT Director in Kansas City. Viewed in a similar manner, the new jobs tax credit is effectively a $2,500 tax credit per each net new job that is also claimed ratably over a five year period.

Taxpayers often don't recognize that the investment tax credit is earned each and every year that a qualifying investment threshold is reached, Moore observes. In addition, taxpayers often don't realize the breadth of expenditures that qualify for the tax credit.

The tax credit not only applies to initial start up investments in plant and equipment, but also to subsequent repairs and improvements to qualifying property, provided the repairs and improvements are capitalized and depreciated, Moore explains. That said, taxpayers can qualify for a new, five year tax credit each and every year they make an investment in excess of $50,000 in qualifying property.

Legislation enacted in 2010 placed a temporary moratorium on the ability to claim, but not accrue, investment and new jobs tax credits for property and jobs placed in service from July 1, 2010, through June 30, 2012, Moore notes.

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WISCONSIN

Enacted Wisconsin Budget Bill, Other Legislation Creates New Tax Credits, Benefits Combined Filers

A robust QPAI tax credit is just one of the benefits recently enacted in Wisconsin.

Enacted Wisconsin tax legislation authorizes a domestic production activities tax credit for qualifying manufacturers and agricultural businesses doing business in Wisconsin. The legislation also provides combined report filers greater autonomy in making a "controlled group election" and allows certain net business loss carryforwards generated by one combined group member to be used by other group members. [A.B. 40, enacted 6/26/11, 2011 Wisc. Act 32]

QPAI Credit Details. The legislation allows taxpayers to claim an income tax credit ("QPAI credit") with respect to eligible qualified production activities income ("eligible QPAI"). (AB 40, Sec. 2011d, adding Sec. 71.28(5n), page 310; Sec. 2122d, adding Sec. 71.47(5n), page 327)

Eligible QPAI equals the lesser of:

- Qualified production activities income, as defined in I.R.C. Sec. 199(c), derived from the use of certain Wisconsin property assessed as manufacturing or agricultural property.
- Income allocated and apportioned to Wisconsin by a corporation not subject to combined filing.
- Income allocated and apportioned to Wisconsin by a unitary business group subject to combined filing.

The QPAI credit, which may first be claimed in a taxable year beginning after December 31, 2012, equals the following percentages of eligible QPAI in a tax year:

- Tax year beginning after 12/31/12 and before 1/1/14 1.875 percent
- Tax year beginning after 12/31/13 and before 1/1/15 3.75 percent
- Tax year beginning after 12/31/14 and before 1/1/16 5.526 percent
- Tax year beginning after 12/31/15 7.5 percent

The legislation requires an addition modification in an amount equal to the QPAI credit in computing net income. (See, e.g., AB 40, Sec. 1896f, amending Sec. 71.26(2)(a)(4), page 291)

The legislation provides that QPAI credits earned by flow through entities (i.e., partnerships, limited liability companies, tax option corporations) are claimed at the owner level, rather than the entity level. In addition, the legislation sets forth guidance regarding the ordering in which the QPAI credit may be claimed, provides that excess tax credits may be carried forward 15 years, that available tax credits must be claimed on a timely filed return, and that the Wisconsin Department of Revenue has full power to administer the tax credit. The legislation also provides that I.R.C. Sec. 383, which limits the use of pre-acquisition credits in the event of a change in ownership, applies for QPAI tax credit purposes. (AB 40, Sec. 2012d, adding Sec. 71.30(3)(dn), page 310)

Other business development incentives. Enacted Wisconsin legislation (A.B. 7, 2011 Wisc. Act 5, enacted 2/19/11) provides a job creation income tax deduction and franchise tax deduction for increases in full-time employment. The deduction, which is effective January 1, 2011, equals $2,000 per full-time employee for businesses with greater than $5 million in gross receipts, and $4,000 per full-time employee for businesses with no greater than $5 million in gross receipts. A second piece of legislation (A.B. 3, 2011 Wisc. Act 3, enacted 2/1/11) grants a relocation business tax credit to businesses that move at least 51 percent of their workforce payroll or at least $200,000 in wages to Wisconsin from another state or country. The tax credit equals the amount of the claimant's tax liability, after applying all other allowable tax credits, deductions, and exclusions. The tax credit is available for two consecutive years beginning in the first taxable year that begins after December 31, 2010, that the relocation occurs. The tax credit in not available to any claimant that has done business in Wisconsin in the two taxable years preceding the year in which the move occurs. Taxpayers that claim the job creation deduction under Act 5 may not claim a relocation tax credit under Act 3.

Combined reporting changes. The legislation repeals, effective January 1, 2009, provisions that grant the department authority to disregard the tax effect of or to disallow a controlled group election, regardless of the reason. The election, which is binding for a 10-year period, effectively allows a unitary business group of corporations subject to combined reporting to include nonunitary affiliated entities in the combined report, at the taxpayer's discretion. A second combined reporting provision allows the sharing - over a 20-year period - of individual member net business loss carryovers available as of the first taxable year beginning after December 31, 2008, but not used in a taxable year beginning before January 1, 2012.

PwC Observes: "The governor has declared that 'Wisconsin is open for business'," says Mark Brzycki, SALT Director with PwC in Milwaukee. "Accordingly, the governor and legislature are working to create a business friendly environment and openly inviting businesses to relocate to Wisconsin from neighboring states."

The QPAI credit is just one of a number of tax incentives enacted recently to encourage business development in Wisconsin, Brzycki observes. Taxpayers interested in claiming a QPAI credit should keep a watchful eye out for Department of Revenue guidance, which will hopefully be issued by the later part of 2011.

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FEDERAL

Alternative and Renewable Energy – Will 2011 Bring an End to Some of the Most Beneficial Investment Incentives?

Incentives for green technologies should continue even in challenging economic times.

In recent years, federal, state and local governments have supported the growth of "green technologies" with a range of tax credits and economic incentives. Some of the most attractive benefits include renewable energy production and investment tax credits, the bonus depreciation deduction for investment in qualifying renewable energy production equipment and facilities, and the Section 1603 grant program. Despite their popularity, some of these proven investment motivators are currently set to expire at the end of 2011. Accordingly, businesses are well advised to ensure they act before time runs out.

Tried and true ideas that worked in the past. Federal, state and local governments have historically encouraged investment in renewable energy equipment and facilities through a range of tax credits. Two of the better known federal tax credits are the I.R.C. Section 45 Renewable Energy Production Tax Credit (PTC) and the Section 48 Renewable Energy Production Facilities Investment Tax Credit (ITC).

The PTC currently equals 2.2 cents/kwhr of electricity sold by the taxpayer to an unrelated person and generated by the taxpayer at a qualified facility using specified renewable energy sources. Qualified renewable energy sources include wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, hydropower, or marine and hydrokinetic renewable energy. The tax credit is available for a period of up to 10 years from the date a facility is placed in service. To qualify, a facility must be placed in service before January 1, 2014; however, earlier placed in service deadlines apply to certain facilities. Notably, the provision for wind properties expires December 31, 2012.

The ITC is available to taxpayers that place in service from 2009 to 2013 a renewable electricity production facility. The tax credit equals 30 percent of the basis of qualified fuel cell property, solar energy property, and qualified small wind energy property placed in service during the year. A 10 percent tax credit applies to equipment used to produce, distribute, or use energy derived from a geothermal property, qualified micro turbine property, combined heat and power system property, and geothermal heat pump systems equipment. The ITC qualifies for property used to generate electricity for consumption by the taxpayer or for sale to a third party.

Section 1603 grant program bridges the gap when tax incentives, capital markets fail to motivate investment. The 2009 American Recovery and Reinvestment Act, as amended by the 2010 Tax Relief Act, authorizes the Treasury Department to provide qualifying taxpayers a grant in lieu of tax credits for investments in renewable energy production facilities. The grant equals 30 percent of the cost of qualified property and applies to property placed in service during 2009, 2010, and 2011. Taxpayers may receive grants for property placed in service after 2011 if construction of the property begins before 2012 and is completed before the tax credit termination date. The enacting legislation requires taxpayers to reduce the depreciable basis of qualifying grant property by 50 percent of the grant amount. The grant program provides an added benefit - grants are not taxable income for federal income tax purposes.

The Section 1603 grant program was primarily intended to provide capital for utility-scale wind and solar energy generation projects. However, Section 1603 grants have been used to invest in:

- Solar photovoltaic generation capacity, typically installed on rooftops or as a canopy on parking structures.
- Fuel cell technology, typically used as a primary or backup source of power.
- Biomass technology, typically used to power electrical generators using agricultural and timber waste or methane gas resulting from organic matter anaerobic digestion.

In addition to the above, a number of large retailers have used Section 1603 grants to install rooftop solar power generation capacity at large distribution centers. Grants have also been used by paper companies to expand the energy generation capacity of equipment powered by timber and other wood waste.

Bonus depreciation – an added incentive. The 2010 Tax Relief Act allows federal taxpayers to claim a 100-percent bonus depreciation deduction for property acquired after September 8, 2010, and before January 1, 2012, and put in service before January 1, 2012 (before Jan. 1, 2013 for certain longer-production period property). In addition, the Act extends through the end of 2012 the time during which federal taxpayers may claim a 50-percent bonus depreciation deduction (through the end of 2013 for certain longer-production period property). The provisions allow taxpayers, on an annual basis, to elect out of the bonus depreciation provisions on an entity-by-entity and class-by-class (i.e., 7-year property) basis, provided the election is made in a timely manner.

Taxpayers that purchase property that qualifies for bonus depreciation and a Section 1603 grant may realize significant cash savings. By way of example, if a taxpayer purchases equipment for $1,000, and the equipment qualifies for a grant and a bonus depreciation deduction, the taxpayer would realize cash savings of approximately $600, or 60 percent, as follows:

- $300: Section 1603 grant ($1,000 x 30% grant)
- $300: Federal tax savings attributable to a 100 percent bonus depreciation deduction ([$1,000 – 150 [$300 x 50%]] x 35% tax rate)

State conformity – or not – to federal tax benefits and incentives. States face increasing competition, on both a national and global scale, to encourage business development in their jurisdiction. The pressure to compete is compounded by the "balanced budget" mandate in almost every state. Unlike the federal government, which can enact a deficit budget year after year, states are barred from following a similar financing strategy. That said, states may have limited ability to offer tax benefits, especially where benefits are viewed as a "tax spend" and subject to scrutiny by commentators on both sides of the debate. The same is often true of grant programs in a tight economy. Despite the odds, states do provide a variety of tax benefits and economic incentives, which may mirror or build upon federal programs to incentivize alternative and renewable energy investment. It's just a matter of knowing where and when to look for incentives.

Remaining questions necessitate additional guidance. Federal, state and local tax and economic development agencies are often charged with implementing and overseeing the tax benefit and economic incentive programs. Accordingly, many of the agencies, in partnership with the business community, issue guidance to clarify program parameters. While much helpful guidance regarding the above tax benefit and Section 1603 grant program has been issued to date, additional guidance is needed in a number of areas, including:

State income tax treatment of Section 1603 grant: As with many issues, taxpayers may face significant challenges trying to determine the state and local tax impact of newly enacted federal incentive programs. For example, while some states conform to the federal treatment of a Section 1603 grant, either through conformity to federal income tax laws or department guidance, a number of states have yet to address the treatment of such grants. Accordingly, the state income tax treatment of a Section 1603 grant may need to be evaluated on a case-by-case basis.

Cost basis of Section 1603 grant property: Treasury guidance issued to date provides limited guidance regarding the calculation of the cost basis of property for purposes of a grant application. While information available to date suggests that taxpayers rely on existing rules regarding whether to capitalize or currently deduct an expense, addition guidance regarding the treatment of specific costs (e.g., permitting fees, insurance costs, engineering fees) is always helpful.

Federal/state treatment of state incentive programs: While obtaining state tax benefits and incentives may require a greater investment of time and energy, taxpayers should not lose site of the need to understand how such incentives are taxed. For example, taxpayers should have a clear understanding of the federal and state tax issues and basis ramifications of state grants and other incentive payments.

Don't let the pending 2011 deadline pass you by. Some of the federal budget proposals introduced to date would extend the enhanced bonus depreciation deduction and Section 1603 grant program through the end of 2012 or later. However, given the contentious debate over the debt ceiling and other budget concerns, it is uncertain whether any of the existing programs will be extended. While a budget extenders package may revive one or more of these items, even on a retroactive basis should they expire, taxpayers are well advised to do what they can now to avail themselves of the existing benefits. That said, taxpayers should take note of the fact that current Treasury guidance provides a safe harbor for companies that intend to install renewable property but that are unable to place it in service by December 31, 2011. In general, the safe harbor requires that a grant applicant incur at least five percent of total project costs before 2012. While the safe harbor provisions restrict the types of costs eligible for inclusion, taxpayers should be able to ascertain whether the costs they expect to incur by December 31, 2011, would be considered in computing the threshold.

For more information about alternative and renewable energy incentives, please contact Courtney B Sandifer, Director, Washington, D.C. (202) 414-1315, courtney.sandifer@us.pwc.com

MULTISTATE DEVELOPMENTS

While not fully inclusive of all developments in state tax credits and incentives, the following provides highlights of some notable items.

Missouri

Supreme Court Dismisses Challenge to DALA Tax Credit Statute. Individual taxpayers lack standing to challenge the constitutionality of the Distressed Areas Land Assemblage Tax Credit Act, which provides tax credits for the development of blighted areas, because the tax credits were not a direct expenditure of funds generated through taxation, the Missouri Supreme Court ruled. [*Manzara v State of Missouri,* MO, No. SC31025, 8/2/11]

New Jersey

Legislation Expands the Urban Transit Hub Credit Program. Enacted New Jersey legislation authorizes developers of mixed-use projects to claim urban transit hub tax credits, increases the amount of the tax credits, permits a carryover of unused tax credits, allows eligible municipalities to determine the percentage of newly constructed residential units to be set aside for occupancy by low- or moderate-income households, clarifies the treatment of intrastate job transfers, and modifies certain definitional terms. S.B. 2972, Laws 2011, effective July 26, 2011

New York State

Tax Appeals Tribunal Upholds Tax Credit Claim. A taxpayer qualifies for the empire zone real property tax credit upon a showing that its business reorganization was not a sham transaction to gain enterprise zone benefits, the New York Tax Appeals Tribunal ruled. Rather, the taxpayer's reorganization resulted in meaningful economic change, given the increased profits at the new corporation and the resulting actual expansion into the metals market through acquisitions in other states. [*Graphite Metallizing Holdings, Inc.,* New York Division of Tax Appeals, Tax Appeals Tribunal, DTA No. 822416, July 7, 2011.

Affirming Division of Tax Appeals, Administrative Law Judge Unit, April 29, 2010]

Pennsylvania

New Tax Credit Enacted, Tax Credit Caps Increased. Enacted legislation authorizes the grant of Keystone Special Development tax credits to qualifying employers in the state. The tax credit, which equals $2,100 for each new full-time equivalent employee in excess of the number of full-time equivalent employees employed before January 1, 2012, can be claimed against corporate and personal income tax, capital stock and franchise tax, bank shares tax, mutual thrift institution tax, or insurance premium tax. The legislation also increases the amount of research and development tax credits, film tax credits, and job creation tax credits that may be granted in fiscal year 2011/2012. Specifically, the legislation increases the total amount of research and development tax credits to $55 million for fiscal year 2011-2012, of which $11 million is earmarked for small businesses. The total amount of film production tax credits and job creation tax credits that may be awarded for fiscal year 2011-2012 is increased to $60 million and $10.1 million, respectively.

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