Multistate Tax Update -- April 23, 2015

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States and cities use tax incentives to drive green economy

In 2010, Joseph Romm, a Senior Fellow at the Center for American Progress, **testified** before the House Ways and Means Committee and shared his findings about how certain provisions of the U.S. tax code inhibit cost-effective commercialization and deployment of clean, homegrown energy. Dr. Romm is well-respected and experienced in this area; during 1997, he was the acting assistant secretary at the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy, and from 1995 to 1998, he was principal deputy assistant secretary.

At the time of his testimony, Dr. Romm noted that the country's tax policy needed a comprehensive energy strategy. While barriers to clean energy still exist through all levels of government, certain cities and states are deploying their own tax policy in a way that encourages environmentally conscious conduct.

Philadelphia

For example, in Philadelphia, lawmakers passed an **ordinance** which amends the green roof tax credit, effective for tax year 2016. **PlanPhilly.com** explained that the plan doubles the credit applicants may receive as a credit against their Business Income and Receipts Tax (BIRT) to 50 percent of the cost of constructing the green roof, not to exceed $100,000. The credit is currently 25 percent of the cost.

Councilwoman Blondell Reynolds-Brown introduced the plan in February. She justified doubling of the credit because "green roofs bring a sizable value to the property owner and the city. In addition, green roofs "control storm water, help curtail flooding, grow fresh fruits and vegetables, pump clean air back into the atmosphere and save property owners money by extending the life of the roof." The city has allocated $1 million for the tax credits.

PlanPhilly revealed that Philadelphia's green roof tax credit program has not paid out very much since its original roll-out in 2007. Only $42,670 in BIRT taxes have been waived for green-roof construction, which implies that only $170,000 has been spent in constructing tax-incentivized green roofs. Councilwoman Reynolds-Brown hopes the bill will encourage more business owners to consider green-roof construction.

New Mexico

The state of New Mexico is also incentivizing environmentally beneficial conduct with tax credits. Since 2007, the state has offered a **Sustainable Building Tax Credit** (SBTC), which the Manufactured Housing Research Alliance described as the "most aggressive green building tax credit legislation in the country."

Lawmakers recently passed **SB 279**, the new sustainable building tax credit with water conservation requirements, the purpose of which is to encourage sustainable building. The credit is available for the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured provided it qualifies as a sustainable building.

The amount of the tax credit is based on the certification level the building achieves in the LEED (Leadership in Energy and Environmental Design) green building rating system and the amount of qualified occupied square footage in the building, as set forth in the **Income Tax Act, Section 7-2-18.19** and **Corporate Income and Franchise Tax Act, Section 7-2A-21**.

New Mexico offers several other **Conservation and Preservation Tax Credits** to reward efforts to preserve or conserve New Mexico's cultural, agricultural, and natural resources.

North Dakota

In an October 2014 **brief** by the Pew Charitable Trusts, the organization discussed the interesting situation in North Dakota that allows the state to capitalize on two seemingly contradictory efforts simultaneously: dirty energy in the form of oil and gas development, and clean energy in the form of wind, solar, and biomass. **Biomass** is the use of plant, animal, or vegetable derived materials to create energy.

North Dakota's clean energy sector is driven by its abundant wind resources. A leader in wind energy, the state's wind resource potential nearly matches the capacity of all U.S. fossil fuel power plants. In 2013, 16 percent of North Dakota's electricity came from wind, and between 2014 and 2023, officials expect to attract $2.9 billion in wind energy investment.

The state no longer offers a 3 percent tax credit for the installation of a biomass, geothermal, solar, or wind energy device in a building or on property owned or leased in North Dakota. Even so, Governor Dalrymple just signed **House Bill 1228**, which extends the carry-forward period for excess income tax credits derived from these devices. The bill provides that any excess tax credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012, may be used as a credit carryover to each of the thirty succeeding taxable years, up from twenty years.

In addition, a 10-year extension applies to tax credits for geothermal, solar, or biomass energy devices installed after September 30, 2008, and wind energy devices installed after December 31, 2011.

Texas

The Texas Comptroller of Public Accounts **announced** that over Memorial Day weekend, encompassing May 23-25, 2015, shoppers will get a tax break on the purchase of certain energy efficient household electronic devices identified with the familiar Energy Star logo.

Eligible devices include the following:

- Air conditioners priced at $6,000 or less (including delivery and installation charges);
- Refrigerators priced at $2,000 or less (including delivery and installation charges);
- Ceiling fans;
- Incandescent and fluorescent light bulbs;
- Clothes washers (Energy Star does not label clothes dryers because most use similar amounts of energy);
- Dishwashers;
- Dehumidifiers;
- Programmable thermostats (even though Energy Star stopped labeling programmable thermostats in 2009, any remaining inventory available for sale is subject to the tax holiday).

Delivery, shipping, handling or transportation charges connected to the sale of a qualifying item purchased tax free during the sales tax holiday also qualify for the exemption, whether separately stated or billed, or not.

Texas has been offering this Energy Star tax holiday since 2007, and with good reason: temperatures during the month of May tend to rise nearly ten degrees. In a major city like Houston, which is the largest city in Texas, and the fourth largest in the nation behind New York, Los Angeles and Chicago, that means increases from about 80 degrees Fahrenheit to almost 90 degrees. Record highs have been set at temperature levels between 90 degrees and 100 degrees during the month.

New Jersey: Department of Taxation issues guidance on the tax treatment of virtual currency

In March, the New Jersey Department of Taxation released **Technical Advisory Memorandum** (Memorandum) that addresses the tax treatment of transactions involving convertible virtual currency, such as Bitcoin and other cryptocurrencies. Last fall, we **described** how a different state, Missouri, handles Bitcoin. We wrote that its Department of Revenue considers Bitcoin to be intangible property, and as such, its transfer was not subject to sales and use taxes.

In contrast, virtual currency is taxable in New Jersey. The Memorandum describes virtual currency as “a form of electronic/digital money that can be used as a medium of exchange or as a form of digitally stored value. Taxpayers may use it to pay for goods or services, or hold it for investment. In some environments, virtual currency may operate like real currency (i.e. coin and paper money of the United States). Generally, virtual currencies can be digitally traded and purchased for, or exchanged into real or other virtual currencies, but do not yet have legal tender status in the United States.”

The Memorandum further explains that convertible virtual currency is treated as property for federal tax purposes. Convertible virtual currency is currency that has an equivalent value in real currency or that acts as a substitute for real currency. The sale or exchange of convertible virtual currency, or the use of convertible virtual currency to pay for goods or services, may have tax consequences that result in a tax liability.

New Jersey considers barter transactions to be included in the definition of a sale for tax purposes. When one uses convertible virtual currency to pay for property, that transaction is considered to be a barter transaction, and is therefore subject to the 7 percent New Jersey sales tax. A prominent feature of the barter transaction is that there are two taxable events because each party owes sales or use tax based on the value of trade.

Proponents of virtual currency oppose this tax treatment because Bitcoin is not recognized as legal tender, and as **Cryptocoinsnews.com** opines, should not be “just another revenue stream for the state.”

Utah: Officials tout the bright economic outlook for 2015

Several prominent publications have been creating buzz for Utah’s business friendly environment over the last several months. These include *Forbes*’ March 19, 2015, article, ***How Salt Lake City And Utah Became The New Gold Standard***, *The New Yorker’s* February 3, 2015, article, ***How Utah Became the Next Silicon Valley***, and *Inc. Magazine’s* November 10, 2014, article, ***Move Over, Silicon Valley: Utah Has Arrived***.

The *Forbes* article cited the Beehive State’s balanced approach to pursuing the right policies as one of the factors that contributed to its rank as **the overall best performing state** for the second year in a row in the U.S. Chamber of Commerce Foundation’s annual **Enterprising States 2014 study**. That study considers economic performance, exports, technology, entrepreneurship, business climate, talent pipeline, and infrastructure for its performance rankings.

One facet of Utah’s strategy to encourage entrepreneurship is the offer of **tax credits** for businesses that locate or expand in enterprise zones.

As it currently stands, any city with a population of 10,000 or less, or county with a population of 50,000 or less is eligible to receive the enterprise zone designation. Authorities review and approve applications on the basis of economic development need and other factors, including the following:

- Pervasiveness of poverty, unemployment, and general distress in the proposed zone;
- Extent of chronic abandonment, deterioration, or reduction in value of commercial property in the proposed zone;
- Potential for new investment and economic development in the proposed zone;
- The applicant's proposed use of other state and federal development funds or programs to increase probability of new investment and development occurring in proposed zone;
- The extent projected development in the zone will provide employment to residents in the zone, and particularly, individuals who are unemployed or economically disadvantaged;
- The degree to which the zone applicant's application promotes innovative solutions to economic development problems and demonstrates local initiative.

The tax credits include the following:

1. A $750 tax credit for each new full-time position filled for at least six months during the tax year;
2. An additional $500 tax credit if the new position pays at least 125 percent of the county average monthly wage for the respective industry;
3. An additional $750 tax credit if the new position is in a business which adds value to agricultural commodities through manufacturing or processing;
4. An additional $200 tax credit, for two consecutive years, for each new position insured under an employer sponsored health insurance program if the employer pays at least 50 percent of the premium;
5. A tax credit (not to exceed $100,000) of 50 percent of the value of a cash contribution to a 501(c)(3) private nonprofit corporation engaged primarily in community and economic development, and is accredited by the Utah Rural Development Council;
6. A tax credit of 25 percent of the first $200,000 spent on rehabilitating a building which has been vacant for at least two years, and which is located within an enterprise zone;
7. An annual investment tax credit of 10 percent of the first $250,000 in investment, and 5 percent of the next $1,000,000 qualifying investment in plant, equipment, or other depreciable property.

There is pending legislation, **S.B. 179**, which would take effect September 1, 2015 and modifies certain provisions. For example, S.B. 179 specifies that the aggregate average annual gross wages of the "high paying jobs" required under the law be 110 percent of the average wage of a community in which the employment will exist, rather than merely "compared favorably against" the wages of such community.

Also, the "new incremental jobs" condition requires that these are full-time employment positions in which the employee works a minimum of 30 hours per week; the prior legislation did not contain the 30 hour per week minimum.

Another element of Utah's success is its self-described status as "**The Indie Film State**." We recently **wrote** about certain states' film tax credit programs, which resulted in some states, such as Kentucky, Georgia, and Nevada, as unexpected film havens. Now, Utah can be added to the list.

Last month, the Utah Film Commission announced that the **Utah Governor's Office of Economic Development** (GOED) granted film incentives to four new projects, including an independent feature, "It's Family." Anticipated in-state spending is $5 million. Beyond this, the production will hire 124 local cast and crew along with 800 extras. The GOED board approved the production for a maximum tax credit of $1.25 million, which represents 25 percent of the dollars left in the state.

Combined with the other three projects, "Into the Mystic," "Saturday's Warrior," and "Riot," all of which are expected to begin filming in 2015, in-state spending is projected to be $6.2 million, and the productions are expected to hire approximately 260 local cast and crew.

Utah's **Motion Picture Incentive Program** offers a 20 percent rebate for productions that spend between

$200,000 and $1 million. For productions that spend over $1 million, the credit is 20 or 25 percent, depending on the percentage of cast and crew that is from Utah, and promotional activity, among other things. The tax credit has no per project cap.

“The World’s Fastest Indian,” which was released in 2004, was the first film project to enjoy Utah’s film tax credit incentive.

Balance between economic incentives and spending has been cited as a significant feature of Utah’s success. An example of how the state plans to re-direct certain tax revenue is **HB 382**, which Governor Herbert signed into law last month. It addresses the use of revenue collected from local sales and use tax for highways and public transit, and authorizes counties to impose a local option sales and use tax for highways and public transit.

An **American Petroleum Institute** study shows that as of April 1, 2015, the national average is 48.85 cents per gallon. As of January 1, 2013, Utah ranked #27 in a **Tax Foundation** state-by-state comparison.

The **Utah Transportation Coalition** (UTC) contends that Utah’s transportation needs are outpacing transportation funding and holds the legislation in high regard. The group reasoned that Utah’s “population will reach 3 million by 2015 and will double by 2050. In order to keep Utah moving, we’re faced with the challenge of not only maintaining, but also future-proofing our infrastructure.”

In addition, according to the UTC, city and county governments have only one-third to one-half the funds they need for transportation infrastructure, which has an adverse impact on rural roads in particular.

The UTC notes that even though Utah’s motor fuel tax has not increased since 1977, the buying power of the tax has decreased by 48 percent, while the cost of some transportation materials has increased by 300 percent over the last decade.

Along these lines, **TheSpectrum.com** pointed out that some of Utah’s most prominent politicians supported the increase because the state needs $54.7 billion in transportation spending over the next 30 years, and $32.7 billion in infrastructure spending over the next 50 years. Without new revenue sources, there could be an $11.3 billion shortfall in the transportation arena.

For additional information regarding these subjects, or any other multistate tax issues, please contact:

David M. Kall
216.348.5812
dkall@mcdonaldhopkins.com

David H. Godenswager, II
216.348.5444
dgodenswager@mcdonaldhopkins.com

Susan Millradt McGlone
216.430.2022
smcglone@mcdonaldhopkins.com

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