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Tax Incentives Alert

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Inside

Heads Up

The federal Treasury and Agriculture departments released new rounds of new markets tax credits and rural development grants, respectively. The second round of new markets credits is good for $3.5 billion.

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

The Price Of Turnover: Where The Heck's That Invoice?

Create training to ensure multiple staff know where to look.

Your company is in the midst of a harried audit and your staff is frantically digging for an invoice that's a couple of years old. The problem is, the former point person on that state's audit has moved on, and his or her replacement hasn't a clue where to find the record needed.

Turnover and downsizings have plagued corporate tax departments for several years, and one of the primary problems they cause is the inability to locate key records until a replacement is hired and adequately trained. Tax leaders find they have to cross-train their staffs to have a good working familiarity with where support data is housed for returns they don't routinely deal with — lest a return deadline be missed or an audit grind to a halt.

"It's just a lot of work," said **Bill Pearson**, director of state and local taxation for **Aventis Pharmaceuticals Inc.**/Bridgewater, N.J. "The person was either not there at the time, or didn't handle the original transaction, or doesn't remember the specifics about the transaction. Or, they may just have left the company."

Solutions to this commonplace problem don't have to be complicated, and often they start with simply hiring smart.

"Hopefully, the person you hire can think," said **Bruce Dickson**, assistant tax director at **AT&T Wireless**/Palm Beach, Fla. "You have to hope you made the right decision in the first place. Hopefully, they have experience to draw off of and make the right mental connections."

The state and local tax manager at **Harris Corp.**/Melbourne, Fla. agrees. "In many ways, it's up to the people to be motivated to keep up to speed with everything," said **Tom Moor**.

STAFF TURNOVER continues on PAGE 7

Rethinking Sarbanes' Demands On Managing Tax Incentives

More reporting in store if incentives have major financial impact.

What is the federal Sarbanes-Oxley act's real impact on the way your company goes after tax and development incentives? *TIA* has examined that issue before (*see February 2004 edition, p. 1, "Here's What Awaits"*) and found it's not easy to get a reliable bead yet on just how much new compliance documentation with incentives qualification and management Sect. 404 of Sarbanes-Oxley demands. Not surprisingly, some advisors are concluding the answer is: Much more rigorous oversight than you're performing now.

One such advisor is **James Renzas**, president of **Location Management Services**/Mission Viejo, Calif. Renzas readily concedes Sect. 404 is far from specific about any demands on public company tax departments to police and document how they qualify for, and stay compliant with, tax and development incentives.

"Most corporate tax departments are struggling now with what they need to provide for SOX," he told *TIA*. "The thing about Sarbanes-Oxley is that it requires a company to have transparency on all aspects of financial statements, and incentives can have a material impact on incentives. If you get an incentive, you need to make sure you keep getting it, to prove yourself to the stockholders. The CFO is going to want to have a similar kind of certification on that as he provides to the stockholders."

To wit, Renzas thinks this is a prudent checklist for tax departments to follow:

SARBANES-OXLEY appears on PAGE 7

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TIA DIGEST

Citizen Gets To Keep Pursuing Case To Void $30.4 Million Abatement

The Alabama Supreme Court helped open the door for average citizens to challenge corporations' tax abatements. Ruling for the first time on the issue, the court decided **Edwin A. Henson** had standing to sue the city of Birmingham, the city Industrial Development Board and **HealthSouth Medical Center Inc.** to nullify the company's $30.4 million local tax abatement. HealthSouth received that incentive after closing one Birmingham hospital and opening a new one, and Henson alleged the abatement was wrongfully granted. Henson argued in trial court that granting an abatement was the same as spending public funds, but HealthSouth countered one taxpayer cannot sue another to force collection of taxes allegedly due.

Michael Martin, AVP of tax at HealthSouth, said he had met Henson, who somewhat ironically works at the Jefferson County property assessment office. Given that the case was remanded to the lower court, nothing has changed with the abatement received in 2001, he said. **Contact Info:** Michael Martin, (205) 970-5847.

Watchdog Group Unhappy Over $1 Billion-Plus Incentives For Wal-Mart

Wal-Mart Stores Inc. is in the Good Jobs First organization's gun sights. A new report, "Shopping for Subsidies," by the Washington watchdog group takes exception to the minimum $1 billion in state and local incentives the giant Bentonville, Ark., retailer has received over time to build new stores and distribution centers [SP TAXLINK I405A-001]. The research didn't cover every project receiving income tax credits, enterprise zone benefits, sales tax rebates, grants, free-or reduced-price land, infrastructure improvements, job-training funds, property tax abatements and TIF or bond financing. Criticizing the social impact of "big-box" retailing in general and Wal-Mart's economic clout specifically, the report concludes: "We believe there is enough evidence ... to justify significant limitations on the use of subsidies for big-box retailing.

David Bullington, Wal-Mart's VP of tax, noted that a food workers union helped pay for the study and said, while reasonably comprehensive in catching incentives awards, "a portion of the specific situations they reported were exaggerated." And, he said, "these local areas got a clear economic benefit." **Contact Info:** Good Jobs First, (202) 626-3780; **David Bullington**, (479) 277-1150.

City Wants To Call Entire Downtown Brownfield, Not Just Individual Sites

Can the entire downtown core of a Sunbelt city be regarded as a brownfield? The Orlando, Fla., City Council will hold a public forum and two council hearings on a plan to designate the entire 1,620 acres covered by the city's Community Redevelopment Agency as a brownfield. That designation could make various state incentives programs managed by the Florida Brownfield Redevelopment Program available to downtown sites. While eye-catching for its sweep and ambition, the proposal by Orlando officials is "entirely appropriate," said **Michael Goldstein**, a South Florida environmental lawyer and chairman of the state brownfield program.

With 75 different plumes of contaminated groundwater identified in the downtown disrict, it would be burdensome and impractical to process individual sites for brownfield benefits, Goldstein said. And, while it's "theoretically" possible for owners of clean sites to unfairly tap brownfields incentives, there are enough safeguards in the state voluntary cleanup and bonus jobs-creation credit programs to prevent abuse, he said. **Contact Info: Michael Goldstein**, (305) 374-5600.

N.C. Incentives Tab For Merck Drug Plant Little Higher Than First Thought

North Carolina's state incentives package that successfully lured a **Merck & Co.** pharmaceuticals plant to Durham County grew since *TIA* last reported on it (*also see TIA, December 2003, p. 2, "North Carolina Digs Deep."*) The final tally was a $24 million site acquisition and development grant from a fund created by legislators in December, $6.1 million in sales and use tax refunds on building materials (compared with a previous estimate of $4.1 million), a $4.1 million job development grant (compared with $3. 7 million previously anticipated), $3 million in Department of Transportation infrastructure work, $1.5 million in William S. Lee credits and $625,000 in training aid. Total value: About $39.4 million, which is 9.4% more than the $36 million package lawmakers okayed in December.

State officials said the incentives grew as a consequence of the Merck project being somewhat bigger than first anticipated. The plant forecasts about 200 jobs and up to $300 million in capital investment. **Karen Sammer**, director of state tax compliance at Merck, declined to comment.

San Francisco Seeks Lost Luster With Biotech By Waiving Occupation Tax

Vastly high land and rental costs drove promising biotech companies out of San Francisco over the last 20 years, but the city wants to become a player again. Supervisor **Michela Alioto-Pier** proposed an ordinance to waive the city's occupational tax for biotech companies for 10 years, after which the tax would be phased in over five years. After tough questioning by some supervisors about whether companies servicing the biotech industry should benefit, a committee tabled the proposed ordinance for more study. Meanwhile, however, Mayor **Gavin Newsom** has grafted a substantially similar 10-year biotech exemption into his city revenue package, which must go before voters.

Alioto-Pier is targeting "promising companies with 75 to 100 people," the kind that for years developed at the University of California-San Francisco and left when the city's costs and taxes lowered the boom, said the supervisor's legislative aide, **Jennifer Entine Matz**. Indeed, the numbers in this exemption would be too small to persuade a biotech to relocate, said **Mike Yost**, tax director at **Genentech Inc.**/South San Francisco. **Contact Info: Jennifer Entine Matz**, (415) 554-7754; **Mike Yost**, (650) 225-4421.

City Asks State To Stick By Rules, Keep Engineering Firm From Bailing

How far do state development agencies really want to get in the middle of communities quarreling over companies lured from one town to another? Ask **Bruce Johnson**, director of the Ohio Development Department. The city of Gahanna in suburban Columbus wrote Johnson objecting to a request by the city of Columbus to waive rules restricting enterprise zone incentives to businesses from moving into areas not designated as "distressed." The **Evans Mechwart Hambleton & Tilton Inc.** engineering firm wants to consolidate eight Gahanna sites into a new headquarters in Columbus. "Though the waiver may be justified" if EMH&T cannot freely expand, Gahanna has granted the firm six property tax abatements since 1993 and offered six new local sites on which it would waive taxes for 10 years, Development Director **Sadicka White** protested in her letter to Johnson.

In a prepared statement, EMH&T President **Nelson Kohman** said the firm's space needs are huge and it's been looking for a new HQ site both within and outside Ohio. **Contact Info: Sadicka White**, (614) 342-4000.

Approx. $10 Million Incentives Package Nails Down Tire Plant

A Japanese tire company accepted a handsome state and local incentives offer to build its first U.S. manufacturing plant northwest of Atlanta. **Toyo Tire & Rubber Co.** will start construction in the fall on a plant in Bartow County, about 40 miles from Atlanta. After weeks of negotiations, Georgia and Bartow County officials crafted an offer of roughly $8 million worth of free land and infrastructure improvements, state jobs-creation tax credits and five-year real and personal property tax abatements. The land and jobs credits would be worth about $9.6 million for the Toyo plant's 900-job first phase. Should orders justify expanding the plant by another 550 jobs in two fu-

Promise Us You Really *Need* This State Grant

State requires pledge in contracts.

If a company promises in writing it would not undertake a project absent the state or local incentive it seeks, how much weight does that carry?

Quite a bit, North Carolina officials feel. All beneficiaries of the several-months-old job development investment grant (JDIG) program — 12 to 14 companies so far — must stipulate both in their application and the grant contract that financial assistance is essential to their projects.

That's more than some throwaway assertion by a company, said **Don Hobart**, counsel at the state Commerce Department. "It becomes a material representation in the development of the contract. The contract is based in part on that representation. If it's not correct, there are grounds [for the state to] revisit the contract."

(However, *TIA* notes, it's one thing to prove a recipient failed to meet a stipulated, quantifiable program requirement; it's quite another to prove after the fact what corporate management's options were at the time they inked an incentives contract.)

State laws setting up the JDIG program don't specifically require this promise in grant contracts. Rather, they establish that a five-member state committee will evaluate a proposed project's necessity in deciding whether to award grants, and that an award must be judged as necessary to the state's interests.

Here, the Commerce Department is using its judgment about how to set up a contract to meet the intent of those laws, Hobart said. "It follows, I think, directly from the structure of the program that a representation like that is to be included in the project."

While he said it's not unusual for such a company pledge to show up in a contract for one of North Carolina's other discretionary incentives programs, he isn't sure whether it's actually stipulated for any of those programs.

Contact Info: Don Hobart, (919) 733-3448.

ture phases, those parts of the incentives package would swell to $10.5 million. Alabama also was in the running for Toyo's first American facility.

H&R Block Allowed To Tap State Credits For Planned New HQ

H&R Block got the state assistance it sought to build a new world headquarters building in its home city of Kansas City, Mo. The Missouri Legislature passed a bill [SP TAXLINK I405A-002] specifically allowing "a tax preparation company headquarters in Kansas City" that invests at least $15 million and creates at least 100 jobs to qualify for the Business Use Incentives for Large-Scale Development (BUILD) tax credit program. The potential benefit from that designation is estimated at a maximum $14.3 million over 15 years. In addition, H&R Block will tap tax increment financing benefits to build its downtown headquarters building, which state and local officials call crucial to Kansas City's redevelopment efforts.

N.C. Considers Construction Tax Refund For Several Major Industries

North Carolina's still-under-negotiation state budget [SP TAXLINK I405A-003] includes a sales tax break for major new facilities in certain coveted industries. The state would refund all state and local sales tax paid on building materials, supplies, fixtures, and equipment that become part of real property for a facility certified by the state Commerce Department. Eligible projects would have to involve at least $100 million of construction spending, and the company would have to be in the aircraft, motor vehicle, defense or semiconductor manufacturing industries. North Carolina already exempts construction-related purchases for the biomed and pharmaceutical industries.

"I think something like this is a good idea because it not only brings in the big manufacturers," said **Tom Farris**, sales and use tax manager for **Asahi Glass America Inc.**/Charlotte, N.C., which makes auto glass among other products. "It also brings in related businesses, because these big manufacturers want their suppliers to be nearby." **Contact Info: Tom Farris**, (704) 357-5080.

Stop Taxing Planes, Parts If You Want To Stay Aviation Hub, City Urged

Denver not only needs to drop its nettlesome sales and use tax on commercial aviation parts, it also should fly its tax on new aircraft out of the country. That's among the recommendations in a new study [SP TAXLINK I405A-004] by the Denver International Airport Partnership business group, which thinks Denver and Colorado are taxing themselves out of competition for the aviation industry. Unlike many cities with aviation hubs, Denver doesn't exempt aircraft and parts; it imposes a 3.5% sales and use tax on them. And, if an airline takes delivery of a new plane in Denver with the aircraft full, it pays no sales tax — but if the plane comes in empty for an initial inspection, it's taxed.

"Our tax department is monitoring the situation in Denver," said **Robert Glenn**, manager of transaction taxes for **American Airlines Inc.**/Dallas. "We believe a closer inspection will reveal a significant cost savings opportunity for the city if the tax is repealed, because of the administrative costs associated with ... the tax." **Contact Info: Robert Glenn**, (817) 967-2865.

Rising Economy Lifts Boat Of Manufacturing Exclusion's Start Date

When the Louisiana Legislature in April decided to phase out the sales and use tax on manufacturing equipment and machinery, they delayed the start date until July 1, 2005, unless conditions arose that could accelerate the process by a year. Well, those conditions have come about. Because the state's forecasted general fund collections for 2004 exceed $235 million, the first phase of the exclusion will start July 1, 2004. Initially, 5% of the cost will be exempt, climbing to a 100% exemption by July 1, 2010. Eligible equipment includes basic manufacturing ma-

Some States Jack Up Bar To Exempt Repair Parts

Wrestling "substantially all" standard.

Most states make it quick and easy for manufacturers to buy replacement parts for their production equipment without paying sales and use tax. However, tax departments in some states face a much greater challenge before they can claim the exemption.

Typically, these are states that, as a matter of policy, have decided that major overhauls of production equipment deserve the manufacturer's exemption but routine repairs don't.

North Dakota, for example, doesn't exempt replacement machinery or equipment "unless it results in a physical or economic expansion of the plant." Utah taxes repairs and maintenance but exempts "normal operating replacements" of equipment with economic lives of three years or more. North Carolina exempts repair and renewal parts "for motors and motor controllers" only. New York and New Jersey exempt parts with useful lives of a year or more. Georgia is exempting parts in 20% increments through 2005.

Arkansas, however, has earned the reputation for making companies jump through the most hoops. Under the state Department of Finance and Administration's Rule GR-55, "substantially all" of a piece of machinery or equipment must be replaced to avoid paying sales tax. Routine repairs, maintenance and partial replacements don't qualify.

The tax department at **Tyson Foods Inc.**/Springdale, Ark., flags all of the purchasing department's capital investment request forms, which are used on expenditures of $1,500 or more, said **Stuart Bray**, manager of sales tax. If the request is for equipment repairs, tax specialists assume that anything over $1,500 is so extensive that they probably should apply for the sales tax exemption, he said.

It's also important to avoid the word "repair" in support documents given to state auditors, he advised. "Overhaul" and "substantial replacement" are less likely to raise red flags.

Contact Info: Stuart Bray, (479) 290-3490.

chinery as well as computers and pollution control equipment, but doesn't including HVAC and raw materials conveyors.

"Even though it is a slow phase-in, it is a positive thing," said **Roland Nicol**, state and local tax manager for **Air Products and Chemicals**/Allentown, Pa., which has operations in Louisiana. "It starts at 5%, then ratchets up to 19%, and the full phase-in won't happen until 2010. Right now, it's encouraging." **Contact Info: Roland Nicol**, (610) 471-7598.

Officials Decide Too Much Ink Wasted On Ending Newspapers' Exemption

Major newspapers in Missouri fought off — or maybe just outlasted — a call by some legislators to end their sales tax exemption on purchases of equipment, newsprint and ink. That provision had been dropped into a bill to prolong and improve the state's enterprise zone program. Based on operating revenue and circulation qualifications, the tax break would have been terminated only for the *St. Louis Post-Dispatch* and *Kansas City Star*. However, bill sponsor Rep. **Tom Dempsey**, R-St. Charles, ultimately stripped the provision because it was distracting attention from the enterprise zone issue.

The proposal apparently was retaliation for newspaper editorials that upset some House members, said **Doug Crews**, executive director of the Missouri Press Association. Even with the newspaper issue removed, the bill failed to pass. **Contact Info: Doug Crews**, (573) 449-4167.

Miami Development Lands Major City-County Abatement Deal

The developer of a planned mixed-use project in Miami negotiated one of the biggest incentive packages in city history. City commissioners recently agreed to abate property taxes over 30 years so the developers of the 56-acre Midtown Miami project can use those funds instead to repay bonds and loans financing infrastructure construction. Also, the city will cover the cost of additional infrastructure such as roads and sewers. Total value of the city package: about $100 million over 30 years. Also, Miami-Dade County's contribution is estimated at another $70 million over those three decades.

"It's safe to say the project could not have proceeded without the subsidy in its current form," said **Scott Schroeder**, spokesman for **Developers Diversified Realty**/Beechwood, Ohio. DDR is building the retail component of the redevelopment project in a one-time rail yard. **Contact Info: Scott Schroeder**, (216) 755-5450.

Tax Radar

TIA has identified the following proposed bills, rules and regulations as worth watching. We'll keep you apprised as they progress.

CALIFORNIA

Bill would create a new state income tax credit for qualified life sciences companies that is tied to both their plant investment and employment gains. For example, should a company hire 50 new employees over three years, it could take a credit equal to 15% of its capital investment during that time. At 75 employees the credit rises to 20%, and at 100 workers it goes to 25%. Effective upon enactment. ▸ Calif. Senate Bill 1572, re-referred to Assembly Revenue and Taxation Committee April 12, 2004. [SP TAXLINK I405A-005]

DELAWARE

A state senator wants to let a corporation whose only activity is to provide "investment activities" or "headquarters services" to members of its affiliated group elect to be taxed as a "headquarters management corporation" rather than pay state income tax. The tax savings could be dramatic: The tax would be the greater of $5,000 or 8.7% taxable income derived from headquarters services plus 4% of income from investment services. Effective for tax years starting after Dec. 31, 2003. ▸ Del. Senate Bill 257, introduced April 8, 2004. [SP TAXLINK I405A-006]

FLORIDA

Machinery and equipment (including molds, dies, machine tools, test beds, testing equipment, computers and software) used "predominantly" — meaning 50% or more of the time — in R&D would be exempt from sales and use tax. Effective upon enactment. ▸ Fla. House Bill 1827, introduced March 29, 2004. [SP TAXLINK I405A-007]

MISSOURI

Tax incentive programs continue to take heat in the Legislature. Bill would terminate, effective with tax years starting after Dec. 31, 2004, credits for new or expanded business facilities, investments or development projects in economically distressed communities, CAPCO and Missouri Individual Training Assistance Program, among others. ▸ Mo. House Bill 778, introduced April 1, 2004. [SP TAXLINK I405A-008]

NORTH CAROLINA

The state R&D tax credit would be denied to any company whose fulltime employment in North Carolina for that tax year is 15% below its peak for the past five tax years. Effective retroactively for tax years starting after Dec. 31, 2003. ▸ N.C. House Bill 1760. [SP TAXLINK I405A-009]

VIRGINIA

The state would create a Virginia Economic Development Incentive Fund, to be administered by the Virginia Economic Development Partnership. It could make up to $10 million per year in grants to projects creating at least 400 jobs with average salaries at least 50% greater than the prevailing average wage for the area and investing a minimum of $6,500 per job or $5 million in capital, whichever is greater. ▸ Va. Senate Bill 5006a, introduced April 12, 2004. [SP TAXLINK I405A-010]

Effect Of Revenue-Raising Pressures Less Pronounced On Abatements Than Credits

Some tax pros spot new clawback attitudes, but several report business as usual.

In contrast to the widespread grumbling among corporate tax pros about prickly new qualification and compliance demands on state incentive programs, discontent over cities' and counties' handling of property tax abatements is less pervasive, *TIA* found this month.

❖

***Tom Farris**, sales and use tax manager, **Asahi Glass America Inc.**/*Charlotte, N.C.:

I've gone before a couple of townships and cities and have requested abatements. What I'm seeing for the first time is clawback provisions. In one particular case, there was an abatement that might have been for 15 years, and when you filed for it, the city attorney kept coming back and saying, 'You might want to do only seven or eight years, because at 14 years and 8 months, if you leave you have to pay it all back.' I took it as wanting us to back off of it because we asked for the maximum. Some companies may back off of it for that reason. But, we want to be a good corporate citizen in that community. Usually in those cases, we can get 100% [city or county abatement] and we pay the local school taxes. Maybe some of these cities are tired of people coming in and saying, 'We're going to put a factory down that will employ thousands of people' and then not do what they say.

❖

***Michael Nesbitt**, tax manager, **Paychex Inc.**/*Rochester, N.Y.:

Both in the discussions on Empire Zone credit talks in New York that I've been following and in a couple of things we as a company have done with local industrial development agencies the last couple of years, we're seeing a lot more focus on proving the results. If you say, 'We're going to move into this facility and renovate it and add 100 jobs over the next three years,' I don't see any more difficulty in getting that kind of project approved. But, we're seeing more scrutiny beyond the initial appproval: Are you meeting your goals or coming close to them? You might have to give back all or part of the incentive. Scrutiny that in the past might have been pretty minimal is now intense.

❖

***Douglas Wright**, manager of tax/business incentives, **WilTel Communications**/*Tulsa, Okla.:

No. We're here in Oklahoma, and I've seen a lot of information about taking abatements away. But, I've never actually seen any of those go into effect in any of our markets. I see them threatening to take things away, but I haven't seen any laws rescinding them. A lot of them are on the table. I don't expect them to go anywhere because I haven't seen them go anywhere in other places.

❖

***Gary Bingel**, tax manager, **Smart & Assoc.**/*Devonshire, Pa.:

I have not because I have not dealt that much recently in property tax abatements. We have a group that does purely property tax. Our real estate guy has not seen a ton of this [tough attitude] in Pennsylvania, because most of it done through Keystone Opportunity Zones. Maybe [municipalities] are developing some of these KOZs that basically don't have all the benefits they should have and perhaps are politically motivated.

❖

***John Baginski**, director of tax compliance, **J.M. Huber Corp.**/*Edison, N.J.:

Our property and sales tax compliance is handled locally by local controllers, and they generally are asked to notify us. We haven't really heard anything along that line. It doesn't seem to have been an issue so far. In fact, we're putting up a new facility in Oklahoma now, and they've been very cooperative in terms of giving us abatements.

❖

***Laura Trimble**, property tax specialist, **Coca-Cola Enterprises Inc.**/*Atlanta:

From what we've been finding, if you get in early enough up front, they're still going to be pretty generous. You have to tie down the numbers in the paperwork before you get to the compliance side. What I'm seeing more of is widespread differences in the paperwork cities and counties require. In Indiana, there's a ton of paperwork, and it's intensive. And, the forms are extremely difficult to fill out. The terms are always a little different in real vs. personal property. Some states are kind of laid back, and you have to get on the phone and find out what they want and in what format. And, in some states, like Georgia, they don't have a lot [of abatement programs] in place.

❖

***Odom Sherman**, VP of taxes, **CEC Entertainment Inc.**/*Austin, Texas:

We franchise the Chuck E. Cheese chain. We've seen very little activity of any kind in [real property] abatements. We're primarily lessees of a very small amount of space, maybe 5% or so, in shopping malls or shopping centers, so any benefit primarily goes to the lessor, not us. We're probably the biggest user of games and rides in the country, and we're much more active in personal property; we work those [abatements] really hard. We use an outside consulting firm that knows our business like the back of their hand, and it's easy for them to impress upon the assessor what the real value is. I'd say the situation with counties and cities on personal property abatements is about status quo.

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Staff Turnover

continued from page 1

Okay, let's say you've made a terrific hire. It takes time even for a dynamo to become acquainted with where your company's repositories of support data are kept and who holds the key. How can you ensure work keeps moving forward at a decent pace in the meantime?

Dickson implemented a regular training program for his staff at his first job and has continued the program to this day.

"I instituted a biweekly meeting for my entire audit staff," he said. "Each time, we learn about a new aspect of the system, we go over the resources that are part of that aspect of the system, and what the staff is supposed to do as it relates to that aspect of the department's processes."

For example, one weekly meeting at AT&T Wireless focused on accounts payable, another dealt with fixed assets. If a topic is quite broad, meetings can be stretched out over several weeks if necessary to ensure that all tax staff are generally familiar with compliance processes outside of their normal responsibilities. The meetings typically last 45 minutes to an hour; anything longer can be counterproductive, Dickson said. "People don't want to have to pay attention for that long."

Harris runs similar meetings, though on a more sporadic schedule than at AT&T Wireless. "We go over technical issues and research issues," Moor said. "Anything that has to do with our day-to-day operations."

Separately, Dickson encourages his staff to make the rounds of other company departments to investigate what they do and why they do it. "I encourage them to ask as many questions as possible," he said. "I believe there's really no such thing as a stupid question."

Harris' tax department and Moor have implemented a system wherein all relevant non-invoice records are kept in common files that everyone in the department can access. "We keep all the information on current audits in a Word file that is updated and backed up constantly," he explained. Each state has its own file in a specific file folder on the tax department network.

"All of our important records are kept in Word or Excel files on a specific drive on our computer server. All of the pertinent e-mails are also kept on this drive, which is updated constantly and indexed very well so that things are very easy to find."

This approach by design works against human nature. "People sometimes have an inclination to hoard files," Moor said. "I really try to keep them from doing that by having the centralized location for all of the data." Getting new employees familiar with the recordkeeping approach has proved pretty easy, he said.

Contact Info: Bill Pearson, (908) 243-1274; **Bruce Dickson**, (561) 775-4241; **Tom Moor**, (321) 727-9169.

Sarbanes-Oxley

continued from page 1

- Can the tax department continually provide the CFO with an accurate and up-to-date report on all ongoing tax and development incentive negotiations, covering jurisdictions and value of incentives, the company's commitments and how long they last?
- Is there a rigorous process in place to track incentives negotiations and produce that report?
- Is the tax department monitoring incentives talks to make sure the company is using the same types of assumptions and metrics to project jobs creation and capital investment in different communities? Or, are operations staff at the local level making overly ambitious promises that can't realistically be met and could well trigger clawback provisions?
- Can the tax department also document all previous incentives agreements, covering both benefits and costs to the company (including consultant fees)?
- Is there a comprehensive report of all clawback provisions in existing incentives agreements and what would trigger them?
- Does the tax department have a formalized process to track company commitments and whether they're made on schedule, any notices of violations and specific efforts to redress those violations?

No more than 3% to 5% of the companies Renzas talks to actually go this far now in tracking incentives compliance, he said. Pressures to take such steps will likelier come from the company's outside auditors in the future than from the federal government, he believes.

TIA spoke with the tax director at a major nationwide retailer whose company has undertaken some rigorous incentives oversight — although not in response to Sarbanes-Oxley. That tax director said he just isn't sure the processes at his company are really required by Sect. 404. "We did it because if we like the incentive enough to negotiate for it, we don't want to lose benefits because we miss a deadline at the end."

Among steps that retailer has taken is creating a database that various departments — from tax to government relations to legal to real estate — can access. That database contains, for example, a scanned copy of an incentives agreement, a schedule of when the company expects benefits and a timetable for meeting the government's requirements, he said. Somebody in an operational job would know to check the database before approving a business project that could unintentionally disqualify the company from a tax credit or exemption, he explained. (This is different from the database the tax department uses to track incentives compliance deadlines.)

Also, the retailer assigns incentives negotiation to a single division that uses the same metrics to forecast a store's potential economic benefit to a community.

Gene Miller, regional tax solutions leader at **Grant Thornton**/Dallas, told *TIA* Sect. 404 should be persuading prudent tax departments to documenting how and when they change procedures to react to a new state revenue department regulatory position.

Contact Info: James Renzas, (949) 472-4482; **Gene Miller**, (214) 561-2270.

AGENCIES

Second Round Of New Markets Credit = $3.5B

Treasury Department makes total $3.5 billion in new markets tax credit allocations available to 62 organizations in 44 states and District of Columbia, in second competitive round of program. ▸ U.S. Treasury Department Announcement, May 2004. [(SP TAXLINK) I405A-011]

$22.8M Of USDA Energy Grants For FY04

U.S. Agriculture Department's rural development program will make $22.8 million of grants available for competitive process in FY04. Grants must be used to purchase renewable energy systems and make energy improvements for agribusiness and rural small businesses. Financial need must be shown, and grants can't exceed 25% of eligible project costs. ▸ U.S. Department of Agriculture Notice, May 5, 2004. [(SP TAXLINK) I405A-012]

Synfuel Qualifying Standard Differs From Code

Even though IRS concluded the level of chemical change in feedstock coal during a taxpayer's conversion process did not meet the standard under Sect. 29(c)(1)(c), there nonetheless was a "statistically significant" chemical change. Therefore, conclusions reached by the taxpayer's experts were "not unreasonable," and the taxpayer could continue to rely upon these private letter rulings to claim the synfuels credit. ▸ IRS Technical Advice Memorandum 200416010, April 16, 2004. [(SP TAXLINK) I405A-013]

Interest Rates Established For May

For May 2004, applicable federal interest rates (on annualized basis) are 1.28% short- term, 2.52% mid-term and 4.19% long-term. ▸ IRS Revenue Ruling 2004-44, May 20, 2004. [(SP TAXLINK) I405A-014]

Interest Rates On Over-, Underpayments Go Down For 3Q

Federal interest rates for 3Q04 will drop by one percentage point, to 4% for overpayments (3% in case of corporation), 4% for underpayments, 6% for large corporate underpayments and 1.5% for portion of corporate overpayment exceeding $10,000. ▸ IRS Revenue Ruling IR-2004-76, June 2, 2004. [(SP TAXLINK) I405A-015]

IRS Sets Interest Rates For June

For June 2004, applicable federal interest rates (on annualized basis) are 1.61% short-term, 3.06% mid-term and 4.62% long-term. ▸ IRS Revenue Ruling 2004-54. [(SP TAXLINK) I405A-016]

Low-Income Credit Bond Factors Set For 2nd Quarter

Monthly bond factor amounts used by taxpayers disposing of buildings or interests that qualify for the federal low-income housing credit are 62.68% of total credits in April, May and June 2004. ▸ IRS Revenue Ruling 2004-40, April 12, 2004. [(SP TAXLINK) I405A-017]

IRS Sets Creative Property Rules For Moviemakers

Film producers can amortize creative property costs over a 15-year period if projects are not slated for production within three years of acquisition. However, unless they formally establish their intention to abandon creative property, they cannot claim a loss deduction for the capitalized costs of acquiring and developing that property. IRS worked out policy at request of Motion Picture Association of America. ▸ IRS Revenue Procedure 2004-36 and Revenue Ruling 2004-58, May 2004. [(SP TAXLINK) I405A-018]

CONGRESS

Renewal Communities Bill Takes First Step

House quickly approves and sends to Senate bill that would expand reach of designated renewal communities (*also see TIA, April 2004, p. 8, "Congress Looks To Expand"*). Under bill, census tracts could be added if they meet poverty requirements based on 2000 census and exceed poverty statistics from 1990 census. Also, tracts with populations of 2,000 or fewer would be treated as low-income communities for purposes of new markets tax credits, if they lie in empowerment zones or are contiguous to two or more low-income areas. ▸ U.S. House Bill 4193, passed by House May 17, 2004. [(SP TAXLINK) I405A-019]

Grassley-Baucus FSC Bill Goes Back To House

Grassley-Baucus bill for replacing federal FSC-ETI exclusion passes Senate as amended, 92 to 5. ▸ U.S. Senate Bill 1637, passed by Senate May 11, 2004. [(SP TAXLINK) I405A-020]

COURTS

Volvo Loses Appeal Over Excise Tax Exemption

Court rejects arguments by Volvo Trucks of North America Inc. that IRS regulation requiring documentation such as signed certificate from dealers that heavy trucks were purchased for resale or long-term lease was arbitrary and capricious, and company relied on representations by auditors that documentation not needed from every dealer. Volvo sought exemption from federal excise tax on heavy trucks sold for resale or lease. "Volvo makes astonishing argument that in order to avoid arbitrariness and capriciousness, 'an administrative agency must uniformly apply its regulations to all applicable situations,'" court said. Decided May 5, 2004. ▸ *Volvo Trucks of North America Inc. v. U.S.*, U.S. Fourth Circuit Court of Appeals No. 03-1256. [(SP TAXLINK) I405A-021]

Duty-Free Vendor Lacks Standing To Fight Excise Tax

Appeals court upholds district court ruling against Ammex Inc., which runs a duty-free warehouse in Detroit. Ammex protested fact that suppliers of gas and diesel passed along federal excise tax on its purchases, asserting that taxation violated Constitution's Export Clause. However, appeals court agreed with lower court that because tax in fact was imposed on suppliers and because Ammex could not prove its fuel sales were for export, it had no standing to protest. Decided May 6, 2004. ▸ *Ammex Inc. v. U.S.*, U.S. Sixth Circuit Court of Appeals No. 02-2375. [(SP TAXLINK) I405A-022]

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ALABAMA

Taxpayer Wins Day In Court Against $30M Incentive

An individual taxpayer has standing to challenge tax abatement granted to a corporate taxpayer, in this case **HealthSouth Medical Center Inc.** Trial court had ruled Henson could challenge an expenditure of state funds as unconstitutional but could not sue state to collect taxes allegedly owed it. Henson had argued granting tax abatement was same as spending public funds. Case represented first time this issue was decided in Alabama courts. Decided April 30, 2004. ▸ *Henson v. HealthSouth*, Ala. Supreme Court No. 1022064.

Cap Credits Popular; Where Are They Most Generous?

Twenty-three "less developed" counties let qualifying companies get state income tax capital credits anywhere in the county, while 13 counties offer that benefit only in enterprise zones. Three Alabama cities let companies qualify for those credits only in enterprise zones. A separate table shows total capital credits taken year-to-date is already up 45.6%, to $20.4 million, even though the number of approved projects has only risen by 6.3% to 67. ▸ Ala. Revenue Department *Revenue Review*, March 2004. [SP TAXLINK I405A-023]

Brownfield Projects To Get Local Tax Abatements

Landowners that voluntarily clean up brownfield sites under Alabama Land Recycling and Economic Redevelopment Act of 1975 will also be able to qualify for local abatements of non-educational transaction (sales) taxes, effective Oct. 1, 2004. ▸ Ala. House Bill 116, signed by governor April 16, 2004. [SP TAXLINK I405A-024]

ARIZONA

State Balks At Matching 50% Depreciation Break

Arizona to conform with changes to Internal Revenue Code except that it won't match federal 50% bonus depreciation; state had decided previously to decouple from federal 30% bonus depreciation. Effective May 5, 2004. ▸ Ariz. Senate Bill 1389, signed by governor May 5, 2004. [SP TAXLINK I405A-025]

Law Cancels Credit Carryover In Company Merger

While a subsidiary that merged with its aerospace company parent could carry over its unused state R&D tax credit, its enterprise zone hiring credits were terminated upon the merger by a state law addressing specifically such business combinations. ▸ Ariz. Revenue Department Private Taxpayer Ruling LR04-002, March 2, 2004. [SP TAXLINK I405A-026]

No NOL Carryforward For Losses In Another State

NOL deduction against state income tax was denied to taxpayer that incurred the associated losses in another state prior to doing business in Arizona. Decided April 2, 2004. ▸ *Sesek & Associates v. Department of Revenue*, Ariz. State Board of Tax Appeals No. 1912-03-I.

CALIFORNIA

Migden Calls For Annual Review Of Tax Credits

Board of Equalization Chairwoman Carole Migden lobbies for passage of Assembly Bill 990, which would require annual review and report on state and local revenue loss, justification to taxpayers and policy goals for each state tax credit program and other "state tax expenditures." ▸ Calif. Board of Equalization Chairwoman's Office News Release, March 30, 2004. [SP TAXLINK I405A-027]

COLORADO

Reg On Income Modifications To Change With Feds'

State wants to replace entire text for regulation dealing with wages and salaries corporate income tax modification, in order to comply with current federal tax law changes. Wages and salaries qualifying for subtraction from Colorado taxable income because they cannot be deducted at the federal level under Sect. 280C of the Internal Revenue Code would include the Indian employment, work opportunity, empowerment zone employment, orphan drug and research expense credits. However the employer Social Security credt could be so subtracted. Public hearing July 7, 2004. ▸ Colo Revenue Department Proposed New Regulation 39-22-304(3)(i), May 2004. [SP TAXLINK I405A-028]

More Oversight, Reporting On Enterprise Zones

Department of Local Affairs executive director must make annual presentation to Legislative Audit Committee that reviews and summarizes information filed by enterprise zone administrators. This presentation will serve as basis of state auditor's annual report to governor and Legislature on how well enterprise zones are fulfilling their mission of creating jobs and triggering capital investment. ▸ Colo. Senate Bill 3, signed by governor April 8, 2004. [SP TAXLINK I405A-029]

Claims For Child Care Credit To Be Limited

State wants to replace entire text for regulation dealing with child care contribution credit (*see related story, TIA, April 2004, p. 1, "More States"*) in order to comply with new Colorado tax law. Income tax credit equals 50% of company's monetary contribution to child care programs or entire in-kind contribution, up to maximum $100,000 credit per year. However, for donations made on or after March 9, 2004, monetary donations would have to be for care provided to child age 12 and under, absent a special grandfathered status. Public hearing July 7, 2004. ▸ Colo. Revenue Department Proposed New Regulation 39-22-121, May 2004. [SP TAXLINK I405A-030]

FLORIDA

Florida Will Go Along With 50% Depreciation

Florida opts to match the Internal Revenue Code enacted on Jan. 1, 2004, which means the state will match the 50% federal bonus depreciation and extend the cutoff date for property acquisition to Dec. 31, 2004, from Sept. 11, 2004. Effective retroactively to Jan. 1, 2002. ▸ Fla. Senate Bill 1826, signed by governor May 28, 2004. [SP TAXLINK I405A-031]

Tougher Jobs Standard In Store For Brownfield Loans

Participants in state brownfield areas loan guarantee program must create 10 new fulltime or part-time jobs *at the site*, not in general, and those jobs cannot be associated with a redevelopment site demolition program. Effective July 1, 2004. ▸ Fla. Senate Bill 338, signed by governor May 12, 2004. [SP TAXLINK I405A-032]

GEORGIA

Jobs Credit Cap Raised, Program Improved

Maximum state jobs credit is raised to 100% of company's tax liability from 50%. Also, requirement for 30% of new jobs to be held by residents of less-developed areas is dropped, and criteria for area to be called "underdeveloped" for purposes of enterprise zone property tax exemptions are liberalized. Effective May 17, 2004. ▸ Ga. House Bill 984, signed by governor May 17, 2004. [SP TAXLINK I405A-033]

Credits Increased In Counties Belonging To 2 Authorities

Counties can belong to more than one joint development authority (JDA), and companies locating in a county that is a member of more than one JDA can qualify for an additional $500 tax credit for each new fulltime job created. Effective May 17, 2004. ▸ Ga. Senate Bill 444, signed by governor May 17, 2004. [SP TAXLINK I405A-034]

No More Capco Insurance Premium Credit

Georgia repeals its insurance premium tax credit available to certified capital companies, effective May 13, 2004. ▸ Ga. House Bill 1507, signed by governor May 13, 2004. [SP TAXLINK I405A-035]

HAWAII

State Won't Match 50% Federal Bonus Depreciation

Hawaii conforms its corporate income tax laws with Internal Revenue Code except that it won't match 50% federal bonus depreciation under Jobs and Growth Tax Relief Reconciliation Act of 2003. Effective for tax years starting after Dec. 31, 2003. ▸ Haw. Senate Bill 2983, signed by governor May 26, 2004. [SP TAXLINK I405A-036]

Criticized Ethanol Credit Program Renamed, Rules Tightened

Hawaii changes ethanol investment tax credit to an ethanol facility credit, because of worries about constitutionality and ambiguous application. New credit will be limited to investment amount and can be taken only in years when plant operates at at least 75% of capacity. Effective for tax years starting after Dec. 31, 2003. ▸ Haw. Senate Bill 3207, signed by governor May 5, 2004. [SP TAXLINK I405A-037]

IDAHO

New Options For Property DQed From Investment Credit

Effective Jan. 1, 2003, recapture of property tax benefits is available either for the capital investment tax credit or for the election. ▸ Idaho House Bill 799, signed by governor March 23, 2004. [SP TAXLINK I405A-038]

ILLINOIS

Personal Property Credit On Line

Unless governor signs House Bill 4887 (which passed the Legislature in May and would extend the state personal property tax replacement income tax credit until 2008), the credit will be unavailable to property purchased after, or binding contracts entered after, Dec. 31, 2003. ▸ Ill. Revenue Department General Information Letter IT 04-0016-GIL, April 27, 2004. [SP TAXLINK I405A-039]

IOWA

Property Credit Broadened, Wind Credit Created

Property rehabilitation tax credits can cover costs incurred before the state certifies the project, if they meet requirements of the federal rehab credit program under Sect. 47 of the Internal Revenue Code. Also, wind energy tax credit equal to 1 cent per kwh of qualified power sold per tax year, for projects placed in service after June 2004 and before July 2007. ▸ Iowa Senate File 2298, signed by governor May 21, 2004. [SP TAXLINK I405A-040]

Grants Become Available For Above-Ground Tanks

State to create an above-ground petroleum storage tank fund, similar to underground tank fund. Maximum grants of $25,000 per site and $100,000 per owner, to reimburse cleanup expenses incurred after Jan. 1, 2004, and before Feb. 18, 2005. Effective May 14, 2004. ▸ Iowa House File 2401, signed by governor May 14, 2004. [SP TAXLINK I405A-041]

Jobs Corps Tax Credit Nixed

Governor vetoes bill that would have created a tax credit equal to 6% of first-year taxable wages paid to graduates of jobs corps centers. ▸ Iowa House File 2561, vetoed by governor May 14, 2004. [SP TAXLINK I405A-042]

KANSAS

Tourism, Sports Projects Now Qualify For Sales Tax Bonds

List of approved projects for financing by sales tax revenue bonds is expanded to include "major commercial entertainment and tourism area" and "major multi-sport athletic complex," and redevelopment project costs can cover "river walk canal facilities." ▸ Kan. Senate Bill 235, signed by governor May 20, 2004. [SP TAXLINK I405A-043]

LOUISIANA

More Documentation Sought From CAPCO Tech Funds

An applicant seeking to be designated as a qualified technology fund under the capital companies tax credit program would have to provide the Economic Development Department with charter documents, copies of any management agreements to which it is a party, a "reasonably detailed" description of how the fund meets criteria, and a copy of its investment policy. ▸ La. Economic Development Department Notice of Intent To Amend Rule LAC 10:XV:331. [SP TAXLINK I405A-044]

MARYLAND

Jobs Tax Credit Granted Three More Years

Sunset date for jobs creation tax credit – and date by which a qualifying business must commence operations – is extended until Jan. 1, 2010, from Jan. 1, 2007. ▸ Md. House Bill 219, signed by governor April 27, 2004. [SP TAXLINK I405A-045]

Lawmakers Extend, Limit Historic Preservation Credit

State heritage structure rehabilitation credit program – controversial for its heavy use – is extended to June 30, 2008, but limited to $20 million program in FY06 and $30 million in FY07 and 08. State hopes to quell controversy by imposing competitive qualification process and stipulating no more than 10% of total annual credits given to one county or Baltimore city. Credit applications will be submitted each year between Jan. 1 and March 31 for the fiscal year starting July 1. ▸ Md. House Bill 679, signed by governor April 27, 2004. [SP TAXLINK I405A-046]

Solar Credit No More, Replaced With Grant Fund

Maryland cancels income tax credit for 15% of cost of installing photovoltaic or solar water heating property, and replaces it with a Solar Energy Grant Program under the Maryland Energy Administration. Effective Jan. 1, 2004. ▸ Md. Senate Bill 485, signed by governor April 27, 2004. [SP TAXLINK I405A-047]

MASSACHUSETTS

New Tests On Manufacturing, R&D Tax Credits

Draft guidance explains how Legislature recently amended state law affecting tax credit for domestic and foreign manufacturing corporations and R&D companies. Test requiring company to derive one-third of receipts from R&D of property capable of being made in Massachusetts had been dropped, and domestic manufacturing and R&D corporations must be engaged in manufacturing in Massachusetts. Also, start-up businesses don't have to meet expenditures standard. ▸ Mass. Revenue Department Draft Technical Information Release 04-XX, April 29, 2004. [SP TAXLINK I405A-048]

State Decouples From Depreciation, Matches Sect. 179 Expensing

Massachusetts' adoption of Internal Revenue Code does not include a match of federal 30% or 50% bonus depreciation provisions, so taxpayers must calculate a separate depreciation schedule for Massachusetts. However, state has adopted increased expensing provision to $100,000 under Sect. 179. ▸ Mass. Revenue Department Technical Information Release 03-25, April 29, 2004. [SP TAXLINK I405A-049]

MICHIGAN

Bills For Federal Mogul, Pfizer Incentives Become Law

Bills to give auto parts supplier **Federal Mogul** a 20-year Economic Growth Authority Tax Credit (assuming certain conditions met) and to provide incentives to retain the company resulting from **Pfizer Inc.**'s purchase of **Pharmacia** have no problem getting governor's signature. *(Also see TIA, April 2004, p. 10, "Company-Specific Incentive Bills.")* ▸ Mich. House Bill 4472, signed by governor April 21, 2004; and House Bill 5445 and Senate Bill 824, signed by governor April 27, 2004. [SP TAXLINK I405A-050, I405A-051, I405A-052]

New Bill Creates Credit For Start-Up Companies

Qualified start-up businesses that lack any business income for two consecutive tax years can claim state single business tax credit equal to liability for the second of those years and for each subsequent year that they post no business income. Effective May 28, 2004. ▸ Mich. House Bill 5331, signed by governor May 28, 2004. [SP TAXLINK I405A-053]

No Dice For Small Company Tax Credit

Governor vetoes bill that would have created tax credit for smaller companies ($10 million or less in gross receipts) equal to 1% of compensation paid to employees occupying new jobs. ▸ Mich. Senate Bill 1093, vetoed by governor May 18, 2004. [SP TAXLINK I405A-054]

MINNESOTA

Omnibus Bill Includes Energy Unit Exemptions

If governor signs omnibus tax bill, certain electrical generation units would be exempt from property tax for assessments in 2005 and afterward, taxes payable in 2006 and afterward. Certain wind-energy units would be exempt for assessments in 2004 and afterward, taxes payable in 2005 and afterward. ▸ Minn. House File 2540, approved by Legislature April 29, 2004. [SP TAXLINK I405A-055]

MISSISSIPPI

Lease Tax Break Added To Development Program

Lawmakers decided to exempt from sales and use tax leases of equipment used in construction or expansion of approved business enterprises in Growth and Prosperity Program (which targets poorer counties). Effective July 1, 2004. ▸ Miss. House Bill 1659, signed by governor May 1, 2004. [SP TAXLINK I405A-056]

New Tax Credit Encourages Port Usage

Companies can take tax credit for up to 50% of receiving/handling/wharfage charges involved in importing and exporting products through Mississippi seaports and airports, up to maximum cumulative credit of $1 million to $4 million, depending on how many people employed at company's Mississippi headquarters. Effective retroactive to Jan. 1, 2004. ▸ Miss. House Bill 829, signed by governor May 12, 2004. [SP TAXLINK I405A-057]

State Creates New Movie Industry Incentives

Motion picture production companies can take tax credit of up to 10% of aggregate payroll for employing state residents on productions shot in Mississippi. 10-year carryforward. Effective July 1, 2004. ▸ Miss. House Bill 1780, signed by governor May 12, 2004. [SP TAXLINK I405A-058]

NEVADA

Retailer Needs Statement On Re-Sale Of Packing Materials

If retailer doesn't collect sales and use tax on sales of baling wire and twine, it must obtain from buyer a sworn statement on state form that purchase will be re-sold as non-returnable container with contents. Effective May 12, 2004. ▸ Nev. Taxation Commission Amended Regulation No. R032-04, posted May 2004. [SP TAXLINK I405A-059]

NEW JERSEY

Housing Credit Allocation Didn't Help Segregation

Court decides state Housing Mortgage Finance Agency did not act outside of state anti-discrimination laws in allocating 2003 low-income housing tax credits. Four public interest organizations argued that, in steering credits to areas with high proportions of minority residents, agency had furthered segregation in violation of federal and state housing laws and constitutions. Decided April 28, 2004. ▸ N.J. Superior Court, Appellate Division No. A-0109-03T3. [SP TAXLINK I405A-060]

NEW YORK

Agricultural Entities May Qualify For Empire Zone

Definition of "locally owned business enterprise" that qualifies for Empire Zone benefits would be expanded to include agricultural cooperatives, effective with tax years starting after Dec. 31, 2003. Governor has yet to sign bill. ▸ N.Y. Senate Bill 4062, approved by Legislature April 8, 2004. [SP TAXLINK I405A-061]

OHIO

Crush Of Work On CPA Firm Can't Excuse Penalty

In appeal papers, CPA firm representing company that was bought in 2002 said amid the rush of paperwork during the deal, it neglected to file company's Ohio property tax return. However, Board of Tax Appeals refused to nullify the late-filing penalty. Decided April 23, 2004. ▸ *Chemron Corp. v. Zaino*, Ohio Board of Tax Appeals No. 2003-A-1442. [SP TAXLINK I405A-062]

OKLAHOMA

Panel To Scrutinize All State Credits, Exemptions

Like several other states, Oklahoma now has a special commission studying existing incentive programs. The Incentive Review Committee will examine all programs for their purpose, economic impact, effect on tax burden and number of claimants. ▸ Okla. Senate Bill 1516, signed by governor May 17, 2004. [SP TAXLINK I405A-063]

RHODE ISLAND

Leased Equipment Counts Toward Investment Credit

Shipbuilding company was eligible to take 10% state investment tax credit on leases of equipment and a drydock, with credit based on fair market value of property at inception of lease times portion of depreciable life of property represented by lease term, excluding renewal options. ▸ R.I. Taxation Division Declaratory Ruling No. 2004-01. [SP TAXLINK I405A-064]

TEXAS

Conveyor System Loses Bid For Rolling Stock Break

A company that uses an electro-hydraulic conveyor system that runs on rails to unload ships cannot claim the state rolling stock sales tax exemption. The unloaders are not traditional or conventional railroad equipment and don't run on rails that connect to traditional railroads. ▸ Texas Comptroller's Hearing 200401485H, posted May 20, 2004. [SP TAXLINK I405A-065]

Mining Dragline Moves Property, Doesn't Process It

Company sought sales tax exemption for its excavating dragline equipment, claiming it was "necessary and essential" to processing. However, balance of evidence indicated the dragline was preparatory to manufacturing, and state disagreed that it created a physical change in the minerals excavated. ▸ Texas Comptroller's Hearing 200401495H, posted May 20, 2004. [SP TAXLINK I405A-066]

Gap With Bonus Depreciation Added Back To Base

Texas does not match the federal $100,000 bonus depreciation for state franchise tax purposes, and instead maximizes the deduction at $25,000. The "unused" $75,000 must be added back to the asset base and depreciated over the life of the asset, for franchise tax purposes. It cannot be carried forward and taken as a maximum $25,000 annual deduction for the next three years. ▸ Texas Comptroller's Letter Ruling 200405553L, posted May 20, 2004. [SP TAXLINK I405A-067]

City Councilman Can Also Serve On TIF Board

Common law doctrine would seem to indicate a city council member cannot simultaneously serve as a board member for a tax increment reinvestment zone, because of the "conflicting loyalties" test. However, because state statute supercedes common law and the Legislature has provided such a board member is not a "public official," the city council member can jointly serve. ▸ Texas Attorney General's Opinion No. GA-0169, March 23, 2004. [SP TAXLINK I405A-068]

VIRGINIA

Jobs Target Lowered For Major Facility Credit

Jobs-creation threshold for major business facility tax credit is lowered to 25 from 100 in severely economically distressed areas suffering unemployment at twice the statewide rate. Appicable only to 2004 and 2005 tax years. Total credit in such areas limited to $100,000 per recipient. ▸ Va. House Bill 615, signed by governor April 20, 2004. [SP TAXLINK I405A-069]

State Still Won't Match Fed Bonus Depreciation

Under 2004 emergency state law, Virginia's fixed date of conformity to Internal Revenue Code was advanced to Dec. 31, 2002, from Dec. 31, 2003. But, state will continue to disallow any bonus depreciation and five-year NOL carryback benefits. Notice provides direction with reconciling legislation with 2003 state income tax returns. ▸ Va. Taxation Department Tax Bulletin 04-2, April 23, 2004. [SP TAXLINK I405A-070]

Neighborhood Assistance Credit Gets 5 More Years

Sunset date on $8 million-per-year state tax credit program for businesses' financial help to neighborhood organizations is extended until 2009 from 2004. ▸ Va. Senate Bill 436, signed by governor April 20, 2004. [SP TAXLINK I405A-071]

WASHINGTON

Rural County Incentives Improved On Several Fronts

Effective April 1, 2004, the following changes take effect in the rural county sales and use tax deferral program: The sunset date is prolonged until July 1, 2010, Island County is added to the list of rural counties and owners/lessors of property can defer taxes on qualifying expenditures if they agree to pass the entire economic benefit to the lessee. Also on April 1, businesses can take $1,000 B&O credit for each software production/programming job in a rural county, and technology help desks can take 100% of b&o tax due for providing such services in rural counties. ▸ Wash. Revenue Department Special Notice, "Rural County Tax Incentives," posted May 20, 2004. [SP TAXLINK I405A-072]

Aerospace Companies Take Property Tax As B&O Credit

Effective Dec. 1, 2003, manufacturers of, and processors for hire of, commercial aircraft can take business and occupation (B&O) tax credit for property taxes paid on new buildings and their land, on increased assessments from renovations and expansions and on machinery and equipment receiving the manufacturer's sales tax exemption. ▸ Wash. Revenue Department Special Notice, "Aerospace Industry B&O Tax Credit for Property Taxes Paid," posted May 12, 2004. [SP TAXLINK I405A-073]

Private Company Paid Plenty To Build Port Terminal

Project: **APM Terminals North America Inc.**/Charlotte, N.C., a unit of the **A.P. Moller Group**, Copenhagen, Denmark, was tapped to develop the country's first large-scale, privately built container terminal, on the Elizabeth River in Portsmouth, Va. The company eventually will invest $450 million in the project and create as many as 210 new jobs, a presence state and local officials hope will stabilize the Hampton Roads area's position in competing for the largest cargo ships.

Official Involved: APM President **Tony Scioscia**.

Incentives Landed: $20 million worth of state roads work, enterprise zone jobs-creation tax credits and grants, state rail improvements and a state training grant.

Bottom Line: As much as $28.3 million over time.

State Grant Lures Citgo HQ From Tulsa

Project: In a much-anticipated move, **Citgo Petroleum Corp.** decided to move its headquarters to Houston from Tulsa, Okla., starting soon. Eventually, about 700 corporate employees will relocate from Oklahoma.

Tax Executive Involved: General Manager of Taxes **Jeanne Sturges**, (918) 495-4000.

Incentives Landed: One of the first grants from the new, discretionary Texas Enterprise Fund and a low-interest $15 million loan from the Texas Industrial Loan Program (whose cost actually will be borne equally by the cities of Houston and Corpus Christi) that eliminated any need for Citgo to seek a property tax abatement.

Bottom Line: *TIA* estimates it at about $7 million over 10 years.

Ag Zone Credits Helps Sausage Maker Keep Grinding

Project: Sausage maker **L.S.I. Inc.** is expanding its plant in its home city of New Glarus, Wis., retaining 195 jobs while crafting plans to create 40 new jobs.

Tax Executive Involved: Controller **Doug Walls**, (605) 849-3367.

Incentives Landed: State agricultural development zone income tax credits awarded to expanding agribusiness concerns.

Bottom Line: $250,000 in credits as jobs are added.

Motorsports Push Starts Paying Off

Project: The first beneficiary of Virginia's bid to specifically market incentives to the burgeoning motorsports industry (*also see TIA, August 2003, p. 2, "Green Flag Waived"*) is **HT Motorsports**, a NASCAR Craftsman-series truck team. The business' relocation to Henry County, Va., from Harrisburg, N.C., will eventually bring 75 new jobs, and HT will work with a community college to create a Virginia Motorsports Technology Center.

Executive Involved: HT owner **Jim Harris**, (434) 528-6701.

Incentives Landed: A construction grant from the Martinsville-Henry County Chamber of Commerce and a state grant from the tobacco settlement fund.

Bottom Line: $100,000 in up-front cash.

Companies In This Issue