Transferable Tax Credits

By James H. Renzas

Providing Assistance Where Assistance is Needed

The Credit Crunch of 2008 has hit the world of economic development hard. Companies that were considering expansion of existing facilities or new facilities have rushed to the sidelines due to uncertainty in the capital markets, general economic malaise and investor concern.

A recent study conducted by DCI on behalf of the Greater Houston Partnership shows that 38 percent of site consultants expect to see a decrease in the demand for their services as a result of recent changes in the world-wide economic climate. Over two-thirds of all site consultants have seen projects either terminated or placed on hold in the last six months.

Yet, studies show that there continues to be strong demand for new locations in the energy, medical, biotechnology and services sectors. Recent estimates of energy-related projects indicate that over $15 billion per year is expected to be spent each year over the next decade on alternative energy projects in the United States alone. In addition, an aging population and changing financial conditions bodes well for the med-tech and services sectors of the economy.

The Drive for Growth Industries

Many states have shifted their economic development attraction programs towards these industries. Massachusetts, for example has recently launched aggressive attraction programs in both the life sciences as well as the alternative energy industries. Grants, tax credits, tax abatements, R&D credits and other programs are typically targeted towards these emerging industry companies as a method to attract high-paying technology jobs in critical industry segments.

California, for example, offers a generous Research and Development tax credit which provides companies 15 percent of the excess of current year research expenditures for qualified research conducted in the state of California. The State has rightly promoted itself as the center for biotechnology and has touted the industry's impact on the State and its research institutions. Yet, few life sciences companies show a profit in the 15-year life-cycle typically required for the creation of a new biotechnology product. Most companies in this segment are research intensive organizations that aim to get the product through a rigorous FDA approval process and then capitalize upon the value- added research by selling or licensing the technology to a much larger organization.

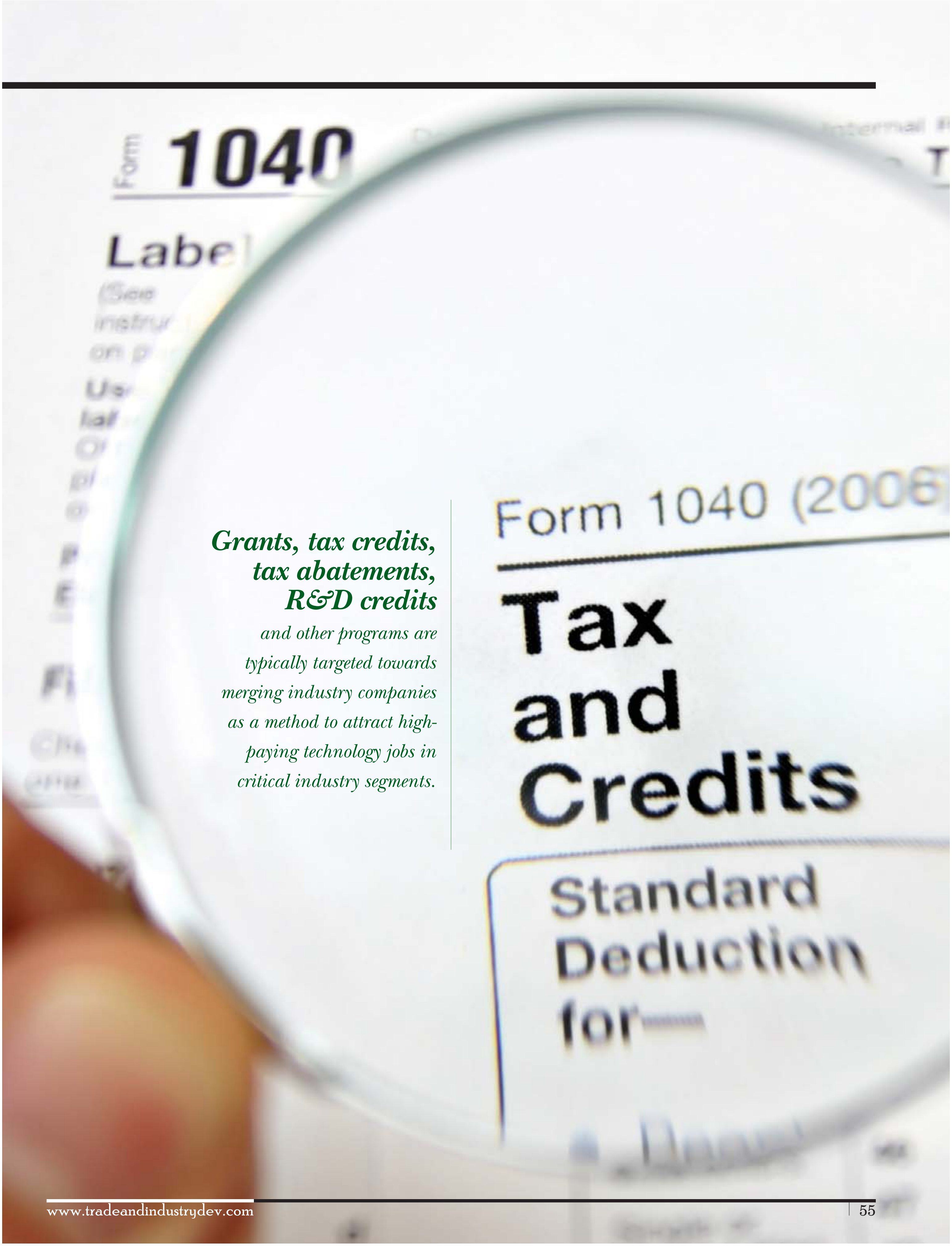
As generous as it is, California's Research and Development tax credit does not provide the needed stimulant to the biotech industry because these credits cannot be monetized. This is because the California Research and Development credits are non-transferable.

Other states have recognized this problem and have implemented tax credits which can be monetized through the sale of the credits to companies with current tax liability in the state.

In 1999, a New Jersey state law went into effect allowing emerging technology and biotechnology companies to transfer, "sell," their unused New Jersey Net Operating Loss carry forwards (NOL's) and New Jersey Research and Development Tax Credits (R&D Credits) for cash. Profitable companies, paying New Jersey corporate tax, can "buy" these credits at a discount thereby reducing their state tax obligation. Administered by the State Economic Development Authority and passed by the Senate and General Assembly of the state of New Jersey (P. L. 1997, c334, Senate No. 1709-Final Version Chapter 140), the intent of this law is not only to stimulate economic growth within the state, but also to aggressively expand the State's emerging technology and biotechnology industries.

The response to the program has been quite favorable. According to an Ernst and Young study conducted on behalf of BioNJ, the number of life sciences companies located in New Jersey has increased for the third year in a row to 238, with over 6,155 employees. R&D expenditures at public life sciences companies have increased to $1.2 billion in 2007 versus just $737 million in 2005. The aggregate market cap of publicly traded life sciences companies in the state had increased to $29.7 billion versus $16.9 billion in 2005.

In response to questions that look at why companies locate and remain in New Jersey, 61 percent of the 2008 respondents indicated that the New Jersey state government provides and supports the industry, a *(Continued on page 58)*



Grants, tax credits, tax abatements, R&D credits

and other programs are typically targeted towards merging industry companies as a method to attract high-paying technology jobs in critical industry segments.

statistic that has increased every year since 2003. A key component of this support is the Tax Credit Transfer program that allows companies that are not making a profit to sell Net Operating Losses (NOL's) and Research and Development Tax Credits.

What are Transferable Tax Credits?

Transferable tax credits allow the company which generates the state tax credits to sell these credits on the market to companies that have state tax liability. Transferability allows an entity that has more tax credits than tax liability to sell what it cannot use. Transferability also allows entities that receive multiyear credits for capital projects to sell the credits and obtain the financing they need.

Transferable tax credits differ from refundable tax credits in that the state will not provide a cash refund of unused tax credits where the company has insufficient tax liability to take advantage of the program. Many states have enacted both transferable and refundable tax credits as a way of providing stimulus to industries where job creation and investment are important to the state's economic development program.

Transferable Tax Credits Drive Oregon Renewable Industry

The State of Oregon offers the Business Energy Tax Credit to those who invest in energy conservation, recycling, renewable energy resources and less-polluting transportation fuels. A transferable tax credit of 50 percent is available for companies in the following industries:

- High Efficiency Combined Heat and Power
- Renewable Energy Resource Generation
- Renewable Energy Resource Equipment Manufacturing Facilities

Through 2007, there were more than 14,000 Energy Tax Credits issued in Oregon.

Trade, business or rental property owners who pay taxes for a business site in Oregon are eligible for the tax credit. The business, its partners or its shareholders may use the credit. The applicant must own or be the contract buyer of the project (the project owner). The business must use the equipment for the project or lease it for use at another site in Oregon. A project owner also can be an Oregon non-profit organization, tribe or public entity that partners with an Oregon business or resident who has an Oregon tax liability. This can be done using the Pass-through Option.

The Pass-through Option allows a project owner to transfer their Business Energy Tax Credit project eligibility to a pass-through partner for a lump-sum cash payment. A project owner may be a public entity or non-profit organization with no tax liability or a business with tax liability that chooses to use the Pass-through Option.

According to an Economic Impact Study prepared by ECONorthwest in May 2007, the annual benefits of the Business and Residential Energy Tax Credit programs in Oregon far exceeded the costs of administering the program. Of the $73.8 million committed in 2006, for example, the net impact on the Oregon economy included:

- Increased output in Oregon's economy of $142.7 million
- 1,240 new jobs in Oregon
- $18.6 million in new Oregon wages
- An increase of $10 million in state and local government tax revenues
- A decrease in commercial and residential energy costs of $48 million.

Solar manufacturers are increasingly considering Oregon as a location for manufacturing and production as a result of these programs. Solaicx, a manufacturer of mono-crystalline silicon ingots and wafers used in the solar industry, announced in June 2008 that it will establish its first high-volume manufacturing facility in Portland, Oregon. In March, 2008, SolarWorld Group, based in Germany, said it will convert an existing semiconductor plant in Hillsboro, Oregon to a solar-wafer and cell manufacturing facility. When fully operational, it will be the nation's largest solar production facility.

SpectraWatt, an Intel spin-off, will make solar cells in Hillsboro, with an initial employment of 135, with potential for expansion. XsunX is completing its factory in Wood Village, Oregon. The company has plans to expand up to 100 MW in solar panel production capacity.

***Refundable tax credits** differ from transferable tax credits, in that refundable, or non-wastable tax credits can be applied to state taxes to reduce the tax owed to below zero, resulting in a moderate negative income tax.*

Average wages in the solar manufacturing industry in Oregon is in the $60,000 per year range. *(Continued on page 60)*

INDIANA

Northwest Indiana –
Fostering a Better Business Climate

Northwest Indiana is fostering a better business climate ideal for technology-based businesses like data centers to TDL and warehousing facilities to advanced manufacturing operations.

It's as easy as one-two-three: 1 percent property tax on residential properties creating an even more affordable quality of life; 2 percent property tax for multi-tenant units; and 3 percent property tax for business and industry.

These property caps were the result of the Indiana General Assembly's House Enrolled Act 1001 effective June 30, 2008 and will phase in over the next two years. The 1-2-3 percent caps are based on real and personal property value.

This law provides for a stable tax environment allowing organizations to accurately assess their tax liability – a key to making informed, educated business decisions.

On the technology front, Northwest Indiana is pursuing legislation to further compete with surrounding states. If passed, the law will provide that the enterprise information technology equipment owned by an eligible business is exempt from personal property taxation for 25 years following the date on which the equipment is placed in service.

Indiana state legislators are addressing this "Transformation Legislation" in the current session. This is yet one more step in stabilizing the Indiana tax climate.

With defined technology districts and associated legislation, technology-related businesses will find Northwest Indiana on the shores of Lake Michigan an ideal location for operations.

For regional information, site selection assistance and workforce data, please visit www.nwiforum.org.

Refundable Tax Credits Becoming More Popular

Refundable tax credits differ from transferable tax credits, in that refundable, or non-wastable tax credits can be applied to state taxes to reduce the tax owed to below zero, resulting in a moderate negative income tax. Because transferable tax credits can only be sold where there is a buyer who needs tax credits, situations *(Continued on page 62)*

Acadiana's doors are wide open for new industry,

with sites in five industrial parks available right now in southwest Louisiana. All with low SLEMCO electric rates and easy access to Interstates 10 and 49. All near Lafayette in the heart of Acadiana, with its business-oriented infrastructure, highly motivated workforce, a major university and the attractive lifestyle of Cajun country, all of which have made us one of the fastest growing areas in Louisiana.

All these industrial parks are served by SLEMCO, offering the unbeatable advantage of low cost electric power. And your electricity costs will remain low, thanks to an advantageous long-term contract we have with our power supplier.

For more details on available sites, visit the Economic Development page of our Web site at http://www.slemco.com/economic.html, or contact SLEMCO's George Fawcett (337-896-2512, george.fawcett@slemco.com) or Ken Bordelon (337-896-2507, ken.bordelon@slemco.com).

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TEXAS

Houston's Greenspoint: Using Incentives with Impact

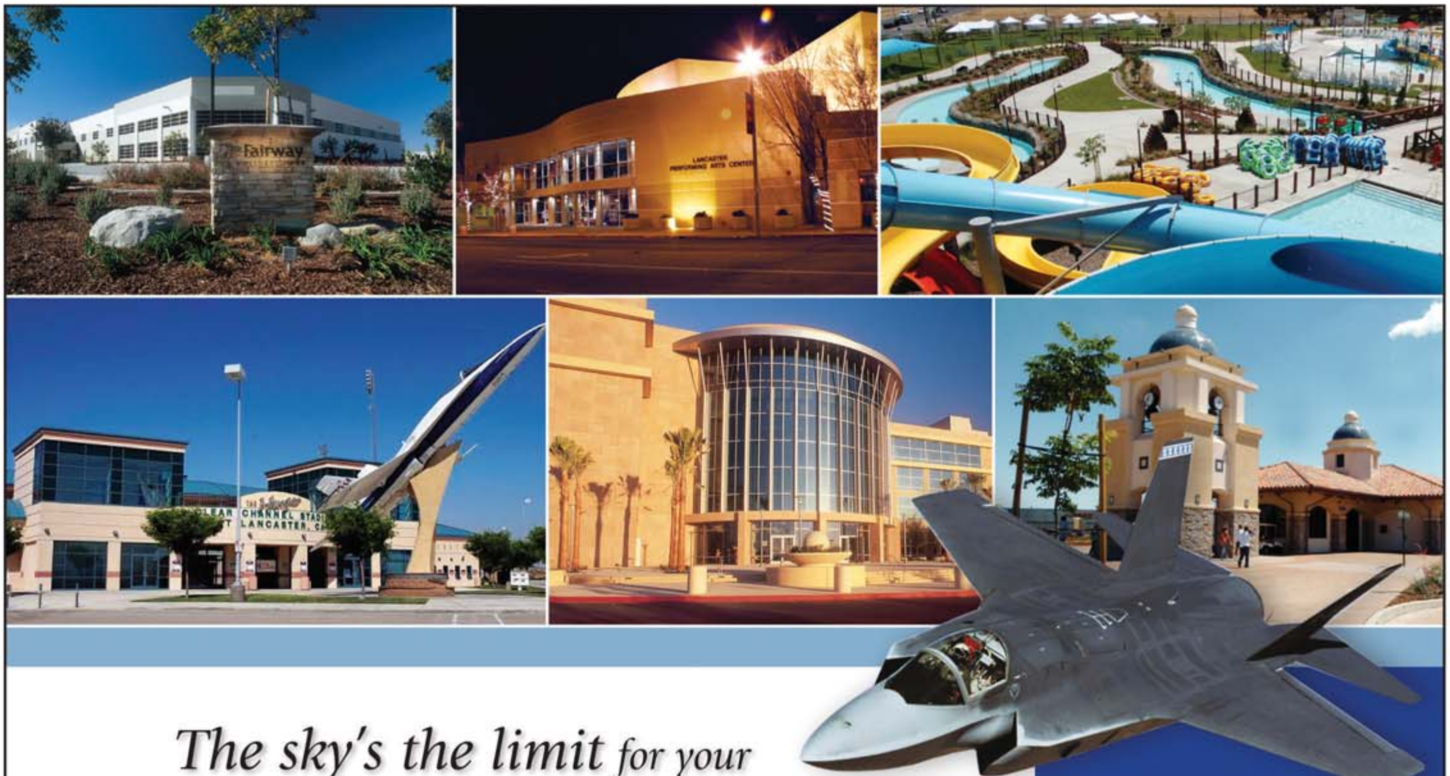
An economic development tool used by the City of Houston, Tax Increment Reinvestment Zones (TIRZs), are not only sparking development, but literally changing the landscape of local communities. Houston's Greenspoint area has become a model for tax increment financing, delivering projects that attract developers and businesses.

"The TIRZ is bringing enhanced streetscape, which includes wider sidewalks, landscaping, trees, public art and benches," said Sally Bradford, executive director of the Greater Greenspoint Redevelopment Authority (GGRA), which oversees Greenspoint's 3,500-acre TIRZ. The TIRZ reimburses developers for including public amenities in projects. For a TIRZ to operate, the area's taxing jurisdictions must agree to return their annual incremental increase in tax revenue over an established base amount to the zone for projects.

Myers, Crow & Saviers, Ltd., a real estate and investment firm, has attracted tenants such as Continental Airlines, FMC Technologies, ExpressJet's corporate headquarters and the United States Postal Service to its five Greenspoint office projects. The firm has worked with Greenspoint's TIRZ to enhance its developments and meet a key need of providing multiple access points for its high density users.

"Only two curb cuts are allowed on the frontage road by the Texas Department of Transportation for this parcel, which limits access," said Greg Mondshine, the firm's managing director, speaking of a 50-acre parcel it's developing. "In order to create better access, a new street must be built. The TIRZ has approved this project, helping us meet the needs of tenants," he added. For more information on the GGRA, please log on to www.greenspoint.org.

can arise where there is insufficient tax liability to fully utilize available transferable tax credits. Refundable tax credits, however, avoid this problem because they allow the recipient of the tax credits to actually receive a cash rebate of unutilized tax credits, once all tax liability has been fully utilized. Companies in fast growing industries and those in emerging fields with heavy development spending can more easily utilize refundable tax credits *(Continued on page 64)*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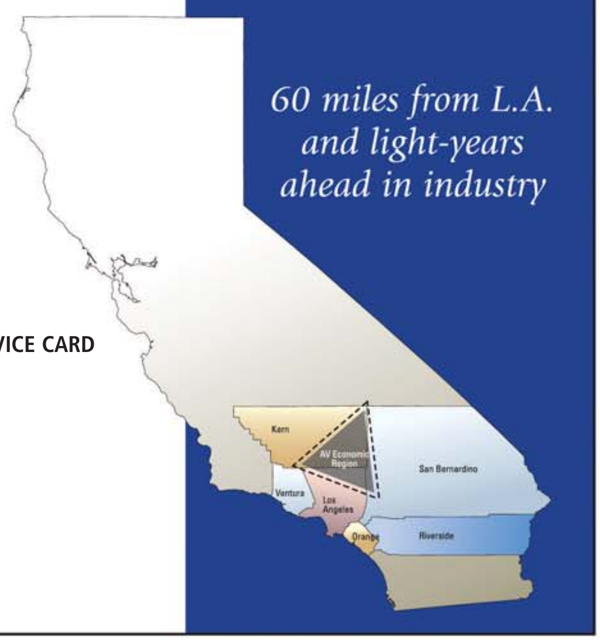
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because it does not require a willing buyer to take advantage of the credits. In addition, the tax credits are available at a 1:1 basis with cash versus 70 to 85 percent for transferable tax credits.

Among the states offering refundable tax credits are Michigan with its MEGA tax credit program; Indiana with its EDGE program and numerous state film production tax credits; Ohio's Job Creation Tax Credit; Nebraska's Advantage Program; New York's Economic Development Zone; Utah's Economic Development Zone tax credit; Maryland's One Maryland Tax Credit, and many other programs.

These programs are among the most desirable as companies never have to worry about whether or not these credits can be monetized.

Tracking and Compliance is Key

The common thread between both transferable and refundable tax credits is the need for rigorous compliance to ensure that the programs are being used as specified by the tax code. In addition, many companies do not correctly calculate the value of these credits or provide timely reports as required by law. Recently, for example, we had a client who had successfully applied and pre-certified for a New York Empire Zone project which entitled the company to up to $3,000 per new hire in refundable tax credits. Due to management changes, however, the company failed to provide compliance reports to the state as required by law, and the Empire Zone project was de-certified. The dollar loss associated with the failure to file timely reports has been estimated to be in the millions of dollars.

In addition, many companies do not effectively communicate with state and local officials regarding the status of their projects. Many programs require verification of job creation or investment. In an uncertain market, companies may not always be successful in creating the number of jobs that they have projected during the incentives negotiation process. Regular communications between state and local officials can help stem the loss of all or a portion of investment or job creation tax credits. Alternatively, if the company creates far more jobs or investment than was originally contemplated, this regular communication program can help you qualify for more credits.

Whenever you or your company are considering establishing new or expanded facilities, a survey of all available tax credits should be conducted as a normal part of doing business. Companies like Bedford can handle this on a contract basis or this can be done by internal staff resources. Once your company has successfully applied for tax credits, it is important that you have a system in place to monitor and maintain these tax credits to ensure full utilization. T&ID

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Rankin County could best be described as the Crossroads of the South with an excellent location and interstate access to every major industrial center in the South, Midwest, and Southwest. Rankin County is a thriving location and as part of metropolitan Jackson, Rankin County is one of the fastest growing counties in Mississippi and will continue to offer all the best in community life, education, employment, housing, and quality of life.

Location & Transportation

The very geography of Metro Jackson helps put businesses located in the area in an excellent logistical position. Metro Jackson is strategically located in the center of the southeast United States and within 500 miles of approximately 76 major metropolitan areas which comprise over one-third of the nation's population. Jackson, the state capital and central city of the metropolitan area, is the intersection for Interstates 55 and 20, and all incorporated communities in the metro area are within 35 miles of Jackson and are traversed by major highways.

Metro Jackson draws many businesses because of its location as a transportation corridor. By road, rail, air, and water, the area offers many ways for quick and easy access to major cities throughout the world. This ability to access both foreign and domestic markets puts the world at the doorsteps of businesses located in Metro Jackson.

- **U.S. Customs Port of Entry**
- **Foreign Trade Zone**
- **Right to work state**
- **Property tax exemptions**
- **Favorable state financing, sales tax exemptions & discounts**
- **Jobs tax credits**
- **Child care tax credits**
- **Basic skills training**
- **Favorable unemployment insurance rates, workers' compensation rates, & tax rates ...and more!**

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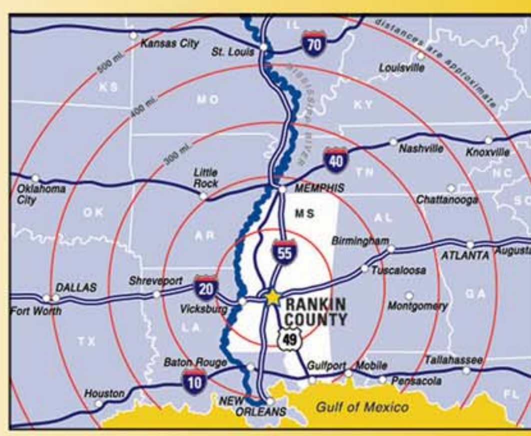

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