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Quick Takes

May 2008

Quick Takes: New Incentives for 2008, Mean a New Outlook for 2008

2008 is the best year ever for incentives! Didn't expect to hear that, did you? Nor did I expect to be saying that, at the beginning of this year's Session of the General Assembly. Remember that this was the year when the entire future of economic development was at stake, what with tax reform being such a hot topic. What happened, though, was something that we had no right to expect. Bad things didn't materialize, and some good things popped up out of nowhere.

So, 2008 was the best legislative year that economic development has had in Georgia in quite some time. Maybe not the best year ever, but at least since the job tax credit program was introduced with the original BEST legislation.

Here are some of the highlights.

Job tax credits can, as of January 1, 2009, be earned by insurance companies and used against the 2.25% premium tax imposed by the State. The job tax credit incentive was also extended to "broadcasting" businesses, effective as of January 1, 2008. The Act (HB 1246) which created this incentive for these industries became effective upon its approval by the Governor.

For HB 1246, thank you, Governor, for signing it on May 14, 2008. In the House, credit goes to the Bill's sponsors, Reps. Richard Royal, Butch Parrish and Allen Peake. In the Senate, thanks to sponsor Chip Rogers, and thanks also to Lt. Governor Casey Cagle, for his support. Credit also goes to the Atlanta Chamber of Commerce for their persistence on this issue. This incentive has been long sought after as a way to overcome a premium tax burden that made Georgia uncompetitive for insurance company projects. Georgia is now back in the game!

Manufacturing- It may be an endangered sector elsewhere, but not in Georgia. On May 14, 2008, Governor Perdue also signed HB 272 (Rep. Jeff Lewis, sponsor), which caps (from July 1, 2008, through December 31, 2010) the state (but not local) sales and use tax on energy "used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale." Energy types benefiting from the cap are natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal. The Act sets a sales price or cost price ceiling for each type of energy, above which no further state sales and use tax is incurred.

On the same day, the Governor also signed into law the "Integrated Plant Theory" which, effective July 1, 2008, will apply for purposes of determining what machinery and equipment used in a manufacturing plant will qualify for Georgia's exemption from the sales and use tax. Supporters of this Act (HB 237, sponsored by Rep. Chuck Martin) say that it will benefit manufacturers that need material-handling equipment/racking systems or air or water pollution reduction systems, or that remanufacture aircraft engines. However, the Act actually works by substituting "necessary and integral to" for "used directly in," before "the manufacture of tangible personal property", in the qualifications for the exemption. Thus, the Act may have an even broader application to other types of manufacturers or processors.

Kudos to the Georgia Chamber of Commerce for its support of these two manufacturers' bills.

The production of certain entertainment in Georgia will benefit from Rep. Ron Stephens' HB 1100. This Act allows a tax credit of as much as 30% (up from as little as 9%) of the expenditures for carrying out such a production in this State. Entertainment covered by the Act includes new film, video or digital projects, such as feature films, series, pilots, movies for television, commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series pilots, or movies for television. A minimum investment ($500,000) is required. The Act amends the Entertainment Industry Investment Act. The amendment became effective upon being signed by the Governor on May 12, 2008, and is applicable to all taxable years beginning on or after January 1, 2008.

Many of Georgia's incentive programs are preoccupied with capital assets, and qualified expenditures for purposes of the Entertainment Industry Investment Act include those on tangible assets such as set construction. However, this Act also allows credits to be earned for expenditures on such items as the operation of sets; wardrobes, make-up, accessories and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel company; insurance costs and bonding, if purchased through a Georgia based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices (but not postproduction expenditures for marketing and distribution).

According to a recent *Wall Street Journal* article, including Georgia there are approximately 40 states and U.S. territories with similar incentives for the film industry, and New York, Michigan and Mississippi have also recently enhanced their incentives in order to be more competitive. California, oddly enough, has no such incentive, but New York's film tax credit can reach 35% of expenditures (in NYC), and Michigan's can reach 42% (in its 103 "core communities), according to this WSJ article. Nevertheless, with this enhanced tax credit for the film (and related) industries, Georgia is on its way to regaining ground it lost to other jurisdictions.

Best of all, the Georgia Entertainment Industry Investment Act credit is outright transferable! That's right- in another break from the typical Georgia rules, the owner of this credit can sell it. And that's a straightforward way to "monetize" the credit. We need more credits like this!

One important thing about monetizing credits is that this can provide equity for projects. In some cases, the project can involve an historic structure. Think- old downtown building being rehabbed for use as a project's office building, or as a hotel to provide needed amenities for a project. Georgia has a newly enhanced tax credit for the rehabilitation of historic structures, thanks to Rep. Allen Peake's HB 851. The historic building or structure has to be a "certified structure." This means a historic building or structure that is individually listed in the Georgia Register of Historic Places or is certified by the Department of Natural Resources as contributing to the historic significance of a Georgia Register Historic District. The credit is equal to 25% of qualified rehabilitation expenditures (an increase from 20%), not to exceed $300,000 in any 120 month period. (Different rules apply to historic houses.) This Act was signed by the Governor on May 14, 2008, and applies to all taxable years beginning on or after January 1, 2009.

Unfortunately, HB 851's provision allowing the sale of the Georgia historic rehabilitation tax credit was removed in the House, so any monetization of it would have to be equity-based. Equity-based syndications of the federal historic rehabilitation tax credit are common, and with appropriate projects, the equity raise can also monetize New Market Tax Credits. The process is simpler with credits that can be transferred, like the Georgia Entertainment Industry Investment Act credit. In Illinois and Louisiana, for example, their film credit already has received the attention of tax credit syndicators.

We may be “playing catch-up ball” in the film industry, but judging by the number of projects in Georgia we seem to have a leadership position in alternative energy projects, such as grain-based ethanol plants, cellulosic ethanol plants, solar energy, and biomass fuel plants. Much credit goes to Jill Stuckey and the State’s Energy Innovation Center for the important role they play in this success!

This year in the General Assembly, we built on the success of last year’s HB 186 (sales and use tax exemption for building materials for alternative fuel facilities). In the House, Rep. Chuck Sims sponsored HB 670, which Sen. Jeff Mullis sponsored in the Senate. Among other things, this Act provides a tax credit for (a) transporting or diverting wood residuals to a renewable biomass qualified facility for the purpose of providing bioelectric power to a third party, and (b) the construction, purchase or lease of certain clean energy property, including specified biomass conversion equipment. The credits under the Act are allowed by the Georgia Revenue Commissioner on a “first come, first served” basis, but may not exceed 35% of the cost of the clean energy property (other than single family residential property), or if less, the limit specified in the Act in certain cases (the limit is $500,000 per installation in the case of biomass conversion equipment). The credit for transporting or diverting wood residuals involves a per tonnage determination, and the Georgia Forestry Commission calculates the dollar value of the wood residuals and certifies the amount of the taxpayer’s credit. The credits are subject to an overall cap of $2.5 million per year for 5 years for all taxpayers for all such credits under the Act. In addition to the biomass-related credits, the Act provides credits for other types of clean energy property, such as solar energy equipment for solar electric (photovoltaic) and other solar thermal applications, and wind equipment. The Governor signed this bill on May 14, 2008. The credits it provides with respect to clean energy property are available for such property placed in service between July 1, 2008 and December 31, 2012.

And the Governor even signed a bill that he didn’t have to sign! This was SR 996, sponsored by Sen. Dan Weber. This proposed a Constitutional amendment that will be on the ballot in November. (Since it received the requisite supermajority vote in both chambers, it did not actually require the Governor’s signature.) If approved by the voters, it will restore to boards of education the right to include the school tax increment in the sources out of which a community can pay redevelopment costs. Restoring this right is vitally important. When these costs are financed through Tax Allocation District (TAD) bonds, without the school tax increment the amount that can be raised is reduced to the point of endangering redevelopment projects statewide.

Another important referendum on the November ballot will relate to the authorization of IDDs (Infrastructure Development Districts). Similar to Florida’s Community Development Districts, if they are approved, IDDs will be able to self-assess properties (commercial and residential) within their borders to provide needed infrastructure. The assessments can be used for bond financing of this infrastructure. IDDs can play an important role in the continuing need to “make development pay for itself.” The vote on IDD’s is the result of last year’s SR 309, which was accompanied by SB 200 that contains the Georgia Smart Infrastructure Growth Act, both sponsored by Sen. Johnny Grant and Sen. Steve Thompson.

Regardless of what happens with IDDs, Georgia will benefit from Rep. John Lunsford’s HB 1019 (signed by the Governor and effective on April 9, 2008), which created the Georgia Transportation Infrastructure Bank. The Bank was funded by the General Assembly, and will provide loans and other financial assistance to pay all or part of the eligible costs of qualified projects for public purposes, including economic development. This other financial assistance can include grants, as well as providing letters of credit and other methods of financial leverage. Eligible projects means highways and specified transportation facilities, and necessary improvements related thereto, such as beltline railroad sidings and lead tracks. Cities, counties, community improvement districts, and public transit operators all may potentially borrow from the Bank. Sen. Jeff Mullis sponsored the Act in the Senate.

And, last but not least, HB 1196, sponsored by Rep. Ron Stephens, will provide certain tax credits for investments related to the State’s Seed-Capital Fund. A 25% tax credit is newly allowed for qualified investments in a research fund, and a 10% tax credit is allowed for qualified co-investing with a research fund in an early stage business. With more capital available, more help will be available to more entrepreneurs. This Act became effective upon being signed by the Governor on May 14, 2008, and applies to investments made on or after July 1, 2008.

This year we have seen quite a rollercoaster ride in the financial and housing markets. But it has been a long time since as much has been done for economic development, as was done in 2008 by the Governor and the General Assembly.

With these new incentives, we can change the outlook for 2008. Maybe it won’t be such a bad year after all!

If you have any questions or comments on these new incentives, please do not hesitate to let me know. And one final note-When considering these incentives, be sure you are familiar with all of their in’s and out’s. For example, in the case of the Georgia Entertainment Industry Investment Act credit, if it is transferred, the production company has to notify the Department of Economic Development and the Department of Revenue within 30 days of the sale or transfer. Remember-“the Devil is in the details.”

Dan McRae

Go to the *“White Papers”* page, for more on-

Alternative Energy Projects; see the White Paper, "Everything You Need to Know About Financing Alternative Energy Projects With Revenue Bonds".
New Market Tax Credits, see the White Paper, "Memorandum- NMTC's and TEB's, New Market Tax Credits and Tax-Exempt Bonds, NAIOP".

Go to the *"Quick Takes"* page, for more on-

Tax Allocation Districts, or TAD's; see February 2008 - "Quick Takes: TAD's- What To Do After the BeltLine Case".
Incentives, see November 2007 - "Credits/Schmedits!- How do I get incentives that mean something?"

The "Current Bond Rates" page at danmcrae.info is updated weekly. This week's version is what you see below.

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CURRENT BOND RATES
EFFECTIVE MAY 23, 2008 **Interest Rates:** **tax-exempt-** **floating: 1.86%** **fixed: 3.47%** **taxable-** **floating: 2.53%** **fixed: 4.64%**
General notes: 1. Rates are posted weekly. These rates are for the effective date indicated above, or as otherwise indicated. For intra-week rates, Contact Dan. 2. These are interest rates on revenue bonds that are variable rate demand bonds; i.e., floating. These can be synthetically fixed via interest rate swaps, as noted below. 3. Tax-exempt rates are for industrial development revenue bonds (IDB's") that are subject to the AMT and are 7 day general market quotes. 4. Taxable rates are for taxable IDB's or for taxable "corporate bonds". 5. Fixed rates are for 10 year terms via swaps. 6. All rates are market extracted and approximations, and are not guaranteed. 7. These rates do not reflect all-in costs; e.g., annual letter of credit fees are not included.

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