Should We Stay or Should We Go? State and Local Incentives, Developing the Decision Making Process©[1]

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In today's uncertain economy companies are in search of methods to control and manage their operating costs. Often times state and local taxes are major contributors to these costs and are heavily weighted factors in a company's decision regarding where to locate and retain investments in both real and human capital. Every state and nearly every political sub-jurisdiction provides tax and financial incentives in order to attract and retain economic development which in turn provides substantive economic impact to their particular jurisdictions. Incentives are provided for purposes of mitigating operating costs, to induce certain activities and operations deemed vital for economic development and to compete for the wealth brought by jobs and capital investments. Incentives are becoming increasingly important in a competitive global economy. In many cases incentives are the differentiating criteria for investment and job growth where otherwise, barriers might exist that would otherwise stymie the flow of capital into a particular jurisdiction.

Statutory and Discretionary Incentives

Our discussion of tax incentives should begin with dividing incentives into two main categories, statutory incentives and discretionary incentives. Statutory tax and financial incentives are available to any company which meets the statutorily provided guidelines, typically involving investment and/or job thresholds with objective qualifying criteria that must be met as well as compliance requirements to preserve said benefits. Often statutory incentives are referred to by economic development professionals as "as of right incentives." "As of right" in the sense that upon meeting qualifying criteria, the incentive is automatically available for the activity or operation of the business enterprise. Discretionary tax and financial incentives are economic development incentives, to be quite literally used at the discretion of legislators and economic development officials in their efforts to create

[1] Learning Objectives for this paper appear in the Appendix.

jobs, secure new capital investment and encourage revenue growth within their jurisdictions. Discretionary incentives are often referred to as “but for” incentives. That is, “but for” the availability of the incentive, the operation or activity associated with the business enterprise would otherwise not locate in that particular jurisdiction and find more favorable climates elsewhere. Discretionary incentives must be negotiated.

Statutory Incentives

Generally speaking, statutory tax incentives are available to any company which meets statutorily provided guidelines, files the correct paperwork and maintains compliance. A company seeking to secure these incentives requires no special action on the part of legislators or economic development officials. The most common statutory tax incentives include; tax credits for job creation and investment, sales tax exemptions, training grants and credits, and location based (Enterprise Zone) tax incentives. State legislatures and local governing bodies enacted and codified statutory incentives in an effort to maintain their jurisdictions competitiveness in the race to attract and/or retain jobs and new and recurring investment to their respective jurisdictions. Property tax exemptions and abatements are sometimes statutory and sometimes discretionary, depending on state law.

Even when available “of right,” statutory incentives are often targeted, and (particularly in the South) often the targeting is by the taxpayer’s SIC or NAICS code. An important threshold issue in evaluating an offer of such incentives is to verify that they are in fact available to the particular taxpayer.

Discretionary Incentives

For the purposes of the panel discussion, we are going to focus our discussion on discretionary incentives. Legislators and economic development officials are permitted to utilize discretionary incentives to effectively compete and “close the gap” in the decision making criteria in order to secure job creation, capital investment and increased revenue streams. Economic development projects which are considered for discretionary incentives are typically projects which bring significant economic impact, are a highly valued industry and there is a need to “close the gap” from a financial and tax perspective in relation to other competing jurisdictions. Projects which receive discretionary incentives may include significant job growth and/or capital investment or perhaps are an effort to retain an important business enterprise in a particular jurisdiction, all of which is important to the governing body of the jurisdiction that is providing the assistance.

Discretionary incentives can be further categorized into two distinct types: discretionary retention incentives and discretionary attraction incentives. Discretionary retention incentives generally serve to assist companies’ in their efforts to maintain and/or increase a current investment within a jurisdiction in light of the potential for it to be located elsewhere. Attraction incentives are provided in order secure new investments by companies which is in the latter stages of deciding where to locate new investments and new jobs.

We wish to explore the differences between discretionary retention and attraction incentives. To accomplish this we will take a look at an array of geographically diverse discretionary attraction and retention incentive programs. We will examine their implications for both the companies that are faced with complex, high risk location decisions and the economies of the states and the local jurisdictions for which these incentives are intended to enhance.

Discretionary Retention Incentives

One usually associates incentives with job creation and investment in new facilities and operations. This association is due to the typical scenario where, in an expanding economy companies have ample capital to invest and state governments, with ever-expanding revenues, can actively compete to attract investments in real and human capital. Discretionary retention incentives enter stage left in an economy which is generally flat to contracting. The flat to contracting economic situation is the one we face at present, where state revenues are shrinking and fewer companies have ample capital to purse high cost and high risk investments. In such economic times retention incentives can be a powerful tool for private enterprise and governments alike who look to secure jobs, investment and ultimately grow the bottom line.

In recent years several states, including New Jersey and Michigan, have created programs which are aimed at providing incentives for retention projects. We will begin our discussion of these retention programs with New Jersey's Business Retention and Relocation Assistance Grant ("BRRAG") program. New Jersey, a high-cost state, created the BRRAG program in 2004 in order to prevent jobs from locating out of state, an increasingly frequent occurrence. The BRAGG program is specifically available for companies which are in the process of making a location decision and relocate jobs and investment from one New Jersey location to another New Jersey location.

The BRRAG program consists of two components, a Tax Credit component and a Sales and Use Tax Exemption component. The Tax Credit component of BRRAG offers grants as credits against New Jersey business tax liability. Grants of up to $1,500 per retained job are available to offset up to 80 percent of business tax payments to the State and are transferable in case they exceed 80 percent of business tax liability. Eligibility requirements stipulate that a company must relocate at least 50 workers from one New Jersey location to another. New Jersey has experienced a great deal of success with the program as evidenced by the approval of legislation by Governor Jon Corzine which lowered the BRRAG Tax Credit grant eligibility threshold from 250 jobs to 50 jobs.

The Sales and Use Tax Exemption component of BRRAG offers sales and use tax exemptions for the purchase of "eligible property" to companies relocating and retaining jobs within New Jersey. Eligible companies must have at least 1,000 employees and relocate at least 500 employees except for manufacturing and life science companies which need only to relocate 250 employees.

Michigan, a state which has seen its once robust manufacturing industry contract severely in the past 25 years has amended its Michigan Economic Growth Authority ("MEGA") statute to create significant retention incentives. The MEGA program allows for credits against Michigan Business Tax based upon withheld payroll taxes of retained employees (employees receive credit for taxes paid). The credits are refundable and are available for up to 100% of payroll taxes withheld from retained employees for a period of up to 20 years.

The MEGA program is available to companies who make a minimum $250 million investment and retain 500 jobs or a company which retains 150 jobs at a facility, 1,000 jobs statewide and makes some amount of new capital investment. The State has liberalized the requirements in recent years by amending the statutory definition of key terms. The State amended the definition of “facility” to allow companies to compute the payroll of jobs from multiple facilities in order to support either new or struggling facilities. The State also amended the definition of “full-time job” to prevent penalizing companies which retain jobs but create new divisions or operating assets.

The value of the credits available under the MEGA program is highly negotiated and takes into consideration multiple factors including; number of retained jobs, total new capital investment, average wage of retained jobs relative to local wages, the cost differential with a competing out of State location, the cost of the credit to the State, local government support for the project and the economic importance of the retained facility and the re-use of an existing facility.

A company must also display compliance with the following criteria in order to apply for MEGA credits; the retention would not occur without the credits, the local unit of government has promised economic support for the project, the business is financially sound, the business has not commenced construction, the credits are meant to address competition for the project from outside the State and the retention project will result in a positive economic benefit to the State.

The New Jersey BRRAG and Michigan MEGA programs are two examples of discretionary retention programs which States have utilized in order to retain a competitive advantage in today’s economy. Tax professionals need to be acutely aware of these programs and how they can help their companies substantially reduce operating costs and successfully weather the storm of a sluggish economy.

Discretionary Attraction Incentives

Discretionary attraction incentives are considerably more notable to Tax professionals and the general public than retention incentives because of the circumstances surrounding their usage. Widespread use of attraction incentives has become generally accepted by taxpayers, governments and private enterprise and is ultimately associated with a bustling economy. During times of economic expansion, companies have ample capital to invest in new facilities and people, and State governments with growing revenue streams which can readily make short term tax concessions in order to secure long term investments. In such times legislators, economic development officials and company executives bask in the glow of the success of public-private partnerships because the pie is ever expanding, and everyone is experiencing economic gain In such times these incentives often do not face scrutiny of the public or governmental bodies and are accepted as a means justifying the prosperity it helps to produce.

Legislators and Economic Development officials generally have several discretionary incentive tools at their disposal. For the purposes of this paper we will examine discretionary attraction incentive programs in two very different states. To continue to explore discretionary attraction incentives we will look at programs in New Mexico and Georgia, states which have enjoyed considerable private investment in recent years through their use of attraction incentives.

The OneGeorgia Authority, which was created by the Governor and the Legislature to allocate a portion of the state's tobacco settlement money for economic development purposes, created the Economic Development Growth and Expansion Fund ("EDGE"). The EDGE Fund was created in order to spur private investment and job creation in Georgia's less developed counties, when a business is making a competitive location or expansion decision between one of these Counties and another State or Country.

The EDGE Fund program provides grant and loan money for economic development projects in amounts that are negotiable, i.e., not limited by statute. The program is somewhat flexible in the allowable use of the funds but generally the grant money should be used to address the major barriers to locating in a rural area. These barriers are often related to a lack of developed infrastructure and in such cases the funds can be used to fund site development and improvements, and public infrastructure improvements. Land acquisition and building costs are also eligible. EDGE Funds can also be used to acquire tangible assets such as machinery and equipment. In the case of a grant to provide assets, the assets are provided to the company through a lease agreement with a local development authority, with the taxpayer obtaining title at the end of the lease. Removing barriers to locating in a rural area and providing assets through loans or grants can be a significant incentive for a company which is considering an eligible location for its investment.

In order to potentially receive EDGE Funding, companies do not make an application directly to the OneGeorgia Authority, rather the local development authority makes an application on behalf of the project with the company as the sub-applicant. The discretionary nature of the EDGE Fund carries substantial eligibility requirements and a fairly intense application process.

In order to be considered for an EDGE Fund incentive the location under consideration for a project has to be within an eligible county. An eligible county must be one which has a population of less than 50,000, be located outside the boundaries of a metropolitan area and have a poverty rate of 10% or higher. Counties which border eligible counties and have a population of 500,000 or less can also be eligible provided they obtain at least one letter of support from another county and demonstrate a regional impact. The project also must be competitive with a location outside of Georgia and cannot be used to give one Georgia community an advantage over another regardless of whether or not one of the Counties is not eligible to receive EDGE funding. Many states which have programs similar to Georgia's require economic and fiscal impact studies in order to reliably quantify the economic benefit to the community and region. The EDGE Fund program requires a "LOCI" study or equivalent public benefit analysis. It is advisable that the Tax professional who is advising their company on such an issue make sure an economic and fiscal impact study is prepared, to greatly improve their company's chances of securing such an incentive whether it be in Georgia or elsewhere.

Georgia has experienced a great deal of success with the OneGeorgia Program and the EDGE Fund program in particular, in securing jobs and investment in their least developed regions. Tax professionals whose companies are considering rural locations need to be aware of the potential incentives available to assist in choosing a rural location.

New Mexico's traditionally agricultural and natural resource centered economy has grown tremendously in the past few decades but the growth has occurred primarily in the service sector. These service sector jobs are by and large low wage positions which typically do not offer substantial benefits. The New Mexico legislature sought to correct this problem through the creation of a discretionary incentive created to attract investment in high wage positions within the State, the High-Wage Jobs Tax Credit ("HWJTC") program.

The HWJTC program allows eligible employers to claim ten percent of wages, up to $12,000 per employee per year, as a credit against the sum of the State's gross receipts, compensating and withholding taxes. The credits may be claimed for a period of up to four years for each high-wage employee and any excess credit is refundable. In order to claim the credit companies have to satisfy a number of eligibility requirements.

To satisfy the HWJTC program's eligibility requirements an employer must conduct more than fifty percent of their sales outside of New Mexico or be eligible for New Mexico's Job Training Program Assistance and increase the number of new high-wage jobs over the previous year. There are a variety of criteria which must be satisfied in order for the company to classify jobs as high-wage positions. The employee must be a resident of New Mexico, hold the job for at least 48 weeks prior to applying for the credit and be employed prior to July 1, 2009. The wage criteria provides that if the company is located in a municipality with a population of over 40,000 people the job must pay at least $40,000 per year and if the company is located in an unincorporated area or a municipality with less a population of less than 40,000 the job must pay at least $28,000 per year.

Through the HWJTC program New Mexico bolstered its economy with the addition of high paying positions in its scientific, technologic and professional services sectors. The addition of these high paying positions will help the State weather the coming economic storm. Tax professionals whose companies compensate particularly well or at least at above average wage levels need to be aware of programs similar to that of New Mexico's in order to assist their company with a strategic location decision.

Case Studies

To this point we have discussed the difference between statutory and discretionary tax incentives and have further elaborated on the differences between discretionary incentives which have been developed to attract new investment and incentives which have been developed to retain existing investment. In this section we will provide case studies of scenarios which will serve as examples of discretionary incentives which have successfully served to retain or attract investment.

Case Study Number 1:

A leading company that supplies products and services for the textile, automotive and plastics industries secured a significant contract to supply an automotive manufacturer with floor components for a new model. The company needed to expand its manufacturing capacity and planned to make a $6 million investment and create over 100 new jobs. Rather than build a completely new facility the company decided it would be prudent to expand one of their current facilities and they then narrowed the choice between two existing facilities, one located in Pennsylvania and one located in Ohio.

Both Pennsylvania and Ohio offered incentives packages to the company in an effort to attract this new investment; the states offered 'cocktails' of incentives combining both statutory and discretionary incentives. Ultimately the company chose Ohio as the location for this new investment due to incentives worth nearly $4 million, a substantial portion of which were discretionary attraction incentives. Among the discretionary incentives was Ohio Business Development Grant money provided to offset capital expenditures on machinery and equipment.

<u>Case Study Number 2:</u>

A leading manufacturer of fastening products, with substantial operations in Georgia, was losing money as a result of an operating structure which included 2 divisions located in Georgia. One of the divisions was losing money due to operating inefficiencies and the company considered closing it in an effort to improve the bottom line. State and local legislators did not want to lose the jobs and revenue that would result from a closure. In an effort to retain to the jobs and revenue the State allowed the company to utilize provisions in Georgia House Bill 1353, allowing for an alternative apportionment of tax. This enabled the company to file a consolidated return for the two divisions, allowing them to sure up the division which was losing money and improve their bottom line. As a result of Georgia's efforts the company has continued to expand operations within the state.

<u>Case Study Number 3:</u>

When a Georgia based conglomerate was involved in a major acquisition, they faced a location decision regarding whether they would stay in Georgia or relocate operations to a central location. City and State officials did not want to have this corporate steward relocate their substantial investment and large number of high paying jobs elsewhere. As an inducement to retain the company, the State allowed the company to utilize Georgia House Bill 1353, provided corporate headquarters tax credits, jobs tax credits and a sales tax exemption on new hi-tech equipment. The State and the City also provided a ten year property tax abatement which was accomplished through the use of Industrial Revenue Bonds.

Georgia's H.B. 191 became fully effective this year and now provides a statutory incentive for taxpayers with multistate operations by adopting a single factor (sales) method of income apportionment.

Challenges of a Global Economy

Business leaders with operations in the U.S. are keenly aware that the markets in which they operate are global and no longer national. The real world impact of low-cost, high-talent locations, such as India, China or Eastern Europe are increasingly in play. The new global challenge is that it grows more complex and the world is becoming more interdependent. In reality, manufacturing can be outsourced to any low-cost location but transportation costs and supply chains introduce further complications in the decision on where to source operations. "Part of the problem is that supply chains are longer and more convoluted: for any given product, raw materials can be sourced in Africa, refined in India, produced in China, assembled in Mexico and finally distributed in the U.S." [2] Competition of some industries within this interconnected global economy is sometimes fierce, particularly in the midst of a pending recession. It is very difficult for U.S. based operations to compete for business with countries offering subsidies or tax havens.

What does this all mean for state and local government representatives trying to attract and/or retain these global businesses? In short, it means that they must revisit their current grants and incentive program objectives and provisions and adapt them to meet these challenges before the exodus of key industries and businesses to other states or countries.

For the past four years, *Chief Executive* has conducted a survey of "Best & Worst States" for top executives to evaluate the states in which they do business on a broad range of issues, such as availability of resources, regulation, tax policies, education , quality of living and infrastructure. In the February 2008 issue of *Chief Executive*, 605 executives were asked to grade each state on the following criteria: 1) Taxation & Regulation, 2) Workforce Quality, and 3) Living Environment.[3] For most of you, the results of that survey will not be surprising. The five worst states in order were California, New York, Michigan, Massachusetts and New Jersey; the five best states in order were Texas, Nevada, North Carolina, Virginia and Arizona.[4] It is not surprising that the highly regulated and highly taxed coastal states of California and New York have the dubious honor as the worst states in which to do business. In the *2008 Competitiveness Redbook*, California ranked one and two again for the highest amount of business taxes as a share of all taxes paid in fiscal year 2006.[5] At number three for the worst states to do business in, Michigan also has been reeling from their lack of diversity beyond the struggling automotive industry. "Overall, the message from these CEOs is that over-taxed and over-regulated states are not conducive to the health of their businesses." [6] On the other hand, Texas scored strong in each category. It has actually held this distinction in each of the four years of the survey due in part to a strong economy, a diversified economic base, and a climate seen as business-friendly.

It is interesting to note that both Michigan and New Jersey which were ranked number 3 and number 5 respectively, for the worst states in which to do business are now offering discretionary retention programs designed to retain businesses in their states. Given the lag in the full financial impact of these programs, perhaps these states are beginning to address the issues that will improve their ranking among CEOs, or perhaps it is not enough to offset the existing highly regulated, highly taxed state environments. Very few states actually offer programs of significance that would serve to retain businesses. The focus of the majority of state and local incentive programs continues to be on statutory and discretionary attraction grants and incentives designed to reward high levels of job creation but that only give token or no recognition to retaining high-paying jobs. Some states with historically diverse and fairly stable economic bases have not seen a need to revise their job creation oriented programs in favor of a more balanced program for both business retention and attraction. However, the grip of pending global economic pressures may cause state and local governments to adapt to these challenges in the future.

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[2] Bergsman, Stephen. Chief Executive: *Shocks to the Supply Chain*, April/May 2008, page 38.

[3] Uhl, Robin. Chief Executive: *CEOs Weigh in on Best, Worst Sates To Do Business*, January/February 2008, p 17.

[4] Uhl, p 17.

[5] National Association of Manufacturers: *2008 Competitiveness Reedbook – National Edition*, Table 10.

[6] Ed Kopco, CEO and Publisher, Chief Executive Group, states that this message of over-taxation and over-regulation is the same principal message since the poll started in 2005.

State economic development group representatives may be sympathetic to various industry advocates stating their own cases of the global competitive pressures they face and retention issues. However, these government representatives are often hampered or restricted by the respective state's legislative or statutory constructs. Though industry advocates and taxpayer representative groups continue to voice their collective concerns and pleas for tax incentive reform, much of it seems to fall on deaf ears. Hopefully, more states will take a proactive approach to address business retention issues before they earn a ranking as one of the worst states in which to do business. It may take a more concerted effort from industry to jump-start legislative reform initiatives within these states.

Current Legal Issues

Tax incentives are a controversial issue by their very nature, and discretionary incentives, particularly the large dollar amounts frequently provided to lure new investment, draw ire from many angles. The constitutionality of tax incentives has been and will be continually challenged in the legal system. In a weakening economy it is quite possible that tax incentives will come under increased scrutiny.

The most historically significant case is *Cuno v. Daimler Chrysler*. Daimler Chrysler planned to invest over $1 billion dollars and create several thousand jobs in Toledo, Ohio. Toledo in return agreed to provide $280 million in incentives for the project, including credits against the Ohio franchise tax and a ten-year 100% property tax exemption. A group of Toledo taxpayers including Charlotte Cuno were particularly bothered by Toledo's concessions to Chrysler in light of city's ailing educational facilities and public infrastructure. Cuno challenged the incentives as a violation of the Commerce Clause of the United States Constitution, in that the incentives placed a burden on interstate commerce. The case eventually worked its way to the United States Supreme Court where it was unanimously dismissed on the grounds that it lacked Federal standing. Chief Justice John Roberts issued the following opinion,

> "Because state budgets frequently contain an array of tax and spending provisions, any number of which may be challenged on a variety of bases, affording state taxpayers standing to press such challenges simply because their tax burden gives them an interest in the state treasury would interpose the federal courts as virtually continuing monitors of the wisdom and soundness of state fiscal administration, contrary to the more modest role Article III envisions for federal courts"[7].

Recently, those who initiated the *Cuno* litigation announced that they were dropping their challenge primarily because the Ohio Investment Tax Credit, which was the tax incentive that was at the heart of the *Cuno* litigation, has been phased out with the enactment of Ohio's new Commercial Activity Tax scheme[8].

North Carolina has also been a hotbed of recent legal activity. Large incentive awards provided to Dell Computers and Google have come under fire in recent years. In 2004 Dell received a commitment to receive up to $300 million in incentives from state and local governments in exchange for a $100 million investment and the creation of 1,500 jobs over a 15 year period. The North Carolina Institute for Constitutional Law has filed suit

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[7] Atkins, Chris. Tax Foundation: Tax Policy Blog, *Unamimous Supreme Court Dismisses Cuno Case* April 16, 2008 http://www.taxfoundation.org/blog/show/1500.html

[8] *When, Where Will Challenges To Tax Credits Re-Emerge?*, Tax Incentives Alert, March 2008

against Dell on the grounds that the incentive awards violate the public purpose clause of the North Carolina Constitution. The Dell case worked its way through the North Carolina court system and culminated in October of last year when the North Carolina Court of Appeals upheld the constitutionality of the incentives. The court held that every state provides for incentives in their tax codes as an inducement for location and expansion and the legislature, not the courts were better fit to discuss the wisdom of particular incentives. In April 2008, the North Carolina Supreme Court dismissed the appeal that challenged the incentives. This decision by the state's highest court should bring to an end this litigation.

Early last year Google agreed to invest $600 million in a data center facility and create 210 jobs in Lenoir, North Carolina, an Appalachian town which has suffered from severe economic problems due to the globalization of the furniture manufacturing industry. County and State officials agreed to grant Google an incentives package worth $260 million over 30 years for locating their investment in the region. The North Carolina Institute for Constitutional Law filed suit in against Google in July of 2007 on the grounds that the sales tax exemption on electricity and equipment Google received violates the North Carolina Constitution. The exemption will allow Google to save nearly $90 million over 30 years. The merits of the suit are currently being discussed but the case has at present not been heard in any North Carolina court.

A case before the U.S. Supreme Court, Kentucky v. Davis, could affect an important financing tool for economic development, industrial development revenue bonds. If the Supreme Court upholds the decision of the Kentucky Court of Appeals, states must afford the same exemption from taxation to the tax-exempt bonds of out-of-state issuers as they do their own issuers, or provide no exemption for any issuer. A decision to uphold will affect the capital markets and lead to legislation on the state level.

On a positive note, in the U.S. Congress S. 2885, if it becomes law, would modernize the federal income tax law governing “small issue” industrial development revenue bonds for manufacturing projects, by expanding the scope of eligible projects to include the production of intangible property such as patents, copyrights, formulae, processes, designs, patterns, know-how, formats, or other similar items. Thus, businesses newly eligible for this type of financing would include software developers and certain biotechnology companies, for example.

Some states are also modernizing their incentives laws. Before the Governor of Georgia for him to sign into law are H.B. 1246, which would expand eligibility for Georgia’s job tax credits program to insurance companies and broadcasters, and H.B. 1129, which would provide for a refund of sales and use taxes to help defray the costs of certain tourism attractions.

Conclusion

The use of both statutory and discretionary incentives continues to be a useful and necessary tool of both state and local jurisdictions in building on the public/private partnership which drives economic growth. The use of discretionary incentives provides governmental entities with the tools necessary to attract businesses by closing the financial and tax gaps which go into the decision making process of where to locate. Since these incentives often involve cash outlays, it is important that state and local governments use discretion and not make such incentives “as of right.” Having programs that give the governmental body complete discretion on the use of such incentives secures the governments ability to keep an eye on cash flow, timing of incentives, budgets and other issues that could impact such awards. Also the discretion allows the governmental entities the ability to step in and help distressed industries that may otherwise relocate or worse, go out of business, costing the jurisdictions many jobs and investment not to mention an erosion of their tax base. Of course, winning the prize project that every state and local government would want is the ultimate goal of state and local economic developers and having such tools in the toolbox can and often does make the difference in the location decision of premium projects with significant economic impact. Jobs and investment are the engine of thriving communities which together comprise thriving state economies. In making the decision to ask for and/or to grant discretionary incentives one must simply ask the question, of whether the return on investment is substantial enough to make the incentive available. If there is significant enough return on investment, then most certainly the added inducement is worthwhile. It would be remiss not to note Alabama's decision in the eighties to use large cash grants to induce Mercedes into the state and to continue such policies to attract other auto manufacturers into the state. Today we can see the evidence of the decision as entire towns have been created and economies created by the location of multiple auto manufacturers. Attracting and retaining jobs and investments mean economic growth. This growth results in better and stronger communities and better lives for the citizens of those communities. Throughout all of the discussions and controversies about incentive programs, it is this bottom line which should be kept in mind when discussing the impact and benefit of incentive programs.

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Appendix – Should We Stay or Should We Go? State and Local Incentives, Developing the Decision Making Process

Topic - State and Local Incentives

1. Understand the two main categories of tax incentives – statutory and discretionary.
2. Recognize and differentiate the objectives of the two primary types of discretionary incentives – retention and attraction.
3. Apply understanding of the discretionary incentives which have successfully served to retain or attract investment to create a win-win situation with companies and governments through three case studies.
4. Recognize the challenges faced by state and local governments and global businesses facing a weakening economy and competitive markets outside the U.S.
5. Understand the current legal issues of tax incentives and the potential impact of a weakening economy.