

TAX INCENTIVE DISCLOSURE AND ACCOUNTABILITY

During the 2008 General Assembly session, legislation was enacted to require greater disclosure and accountability of tax credits received by corporations. The legislation required that information about six tax credits be released in three phases. Phase One, just released for the second year in a row by the Rhode Island Department of Revenue, lists the names and addresses of the recipients and the amount of the tax credits received during the previous fiscal year.

Phase Two, which is required to be released annually on or before October 15th, was to report comprehensive information regarding the costs and benefits of the tax credits. The information would include summaries of the number of full-time and part-time jobs created or retained, employee benefits provided and the degree to which job creation and retention, wage and benefit goal requirements have been met. The first such report was due last October (2008), but still has not been issued close to one year later. It is impossible to judge the usefulness of these tax credits without the information required in Phase Two of the law. This information is critical if policy makers are to judge, based on facts, if the tax credits are in fact creating and retaining jobs. Phase Three requires the tax credit information to be presented in the State Budget so that tax expenditures can be considered as part of the budget process. Phase Three has yet to be completed, as well.

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HIGHLIGHTS FROM THE 2009 TAX CREDIT AND INCENTIVE REPORT

- During Fiscal Year 2008 and Fiscal Year 2009, Rhode Island General Fund revenues were reduced by \$82.3 million as a result of the six tax credits included in the report.
- In Fiscal Year 2009, tax credits reduced state revenues by \$33.1 million. The average tax credit was worth \$380,646.
- The largest loss of revenue resulted from the Job Development Credit, which reduced state revenues by \$14.2 million in FY2009. Eighty percent (80%) of the total value of these credits went to CVS Pharmacy, Inc.
- The second largest loss in revenue resulted from the Motion Picture Credit, at \$10.1 million in FY2009. This credit has not reached its recently imposed cap of \$15.0 million for the second year in row. Eight recipients claimed these credits in FY2009, ranging from A Second Wind LLC, which claimed \$115,372, to Brotherhood Productions, Inc., which claimed \$5,069,323 for the series Brotherhood.

- The third largest loss of revenue (\$7.3 million) resulted from the “Project Status/Sales Tax Exemption.” The number of taxpayers dropped from thirteen to seven. The requirement for General Assembly approval prior to issuance of this type of credit was repealed in 2009.
- The Mill Building Credit was terminated in August 2009 (FY2010), one of the very few tax credits with a sunset provision.

During FY08 and FY09, General Fund revenues have been reduced by \$82.3 million as a result of the tax credits.

SUMMARY OF FY2008 and FY2009 TAX CREDIT INCENTIVE REPORTS

	FY2008	FY2009
Rhode Island Economic Development Corporation Project Status		
Total Taxpayers	13	7
Total Amount of Credits	\$ 18,253,364.06	\$ 7,349,337.09
Average Per Taxpayer	\$ 1,404,104.93	\$ 1,049,905.30
Incentive for Innovation and Growth		
Total Taxpayers	4	5
Total Amount of Credits	\$ 305,000.00	\$ 450,000.00
Average Per Taxpayer	\$ 76,250.00	\$ 90,000.00
Jobs Development Act		
Total Taxpayers	11	10
Total Amount of Credits	\$ 16,248,317.00	\$ 14,197,311.00
Average Per Taxpayer	\$ 1,477,119.73	\$ 1,419,731.10
Distressed Areas Economic Revitalization Act – Enterprise Zones		
Total Taxpayers	88	58
Total Amount of Credits	\$ 1,556,649.39	\$ 1,066,996.60
Average Per Taxpayer	\$ 17,689.20	\$ 18,396.49
Mill Building and Economic Revitalization Act		
Total Taxpayers	0	0
Total Amount of Credits	\$ -	\$ -
Average Per Taxpayer	\$ -	\$ -
Motion Picture Production Tax Credit		
Total Taxpayers	4	8
Total Amount of Credits	\$ 12,788,434.00	\$ 10,052,553.00
Average Per Taxpayer	\$ 3,197,108.50	\$ 1,256,569.13
Total Taxpayers	120	88
Taxpayers Receiving Multiple Credits	2	1
Net Number of Taxpayers	118	87
Total Amount of Credits	\$ 49,151,764.45	\$ 33,116,197.69
Average Per Taxpayer	\$ 416,540.38	\$ 380,645.95

PHASE ONE: LIST OF TAX INCENTIVE CREDITS

In the following, The Poverty Institute provides a summary of each of the six categories of the credits reported. In each subsection, entitled CRITERIA, you will find a description of what a corporation must do in order to qualify for the credit.

Rhode Island Economic Development Corporation Project Status (RIGL 42-64-10)

TAX CREDIT: Provides for a sales and use tax exemption for the cost of construction materials and furnishings related to Economic Development projects.

TAXES IMPACTED: Sales and Use Tax

APPROVAL: A finding of the Rhode Island Economic Development Corporation (RIEDC). In addition approval by the General Assembly (since 2006) is needed. In 2009, General Assembly approval was repealed.

CRITERIA: The finding must include a statement "That the acquisition or construction and operation of the project will prevent, eliminate, or reduce unemployment or underemployment in the state and will generally benefit economic development of the state." In 2007 the RIEDC, working with the General Assembly, established criteria that go beyond the law. In order to qualify a corporation must create more than 100 new full time jobs. "Full-time jobs with benefits" means jobs that require working a minimum of thirty (30) hours per week within the state, with a medium wage that exceeds by 5.0% the median annual wage for full-time jobs in Rhode Island or within the lessee's industry, with a benefit package that is typical of companies within the lessee's industry. Finally the loss of sales tax revenue due to the exemption cannot exceed the amount of personal income tax revenue generated by the new full time jobs over the next three fiscal years. These new criteria do not apply to previously approved exemptions. Prior to 2007 EDC did require the 100 job requirement, but this requirement did not contain the same criteria nor definitions.

TOTAL REPORTED:

FY2008: 13 recipients, \$18.3 million. Average per Recipient: \$1.4 million.

5 Out-of-State Taxpayers, 8 In-State Taxpayers

FY2009: 7 recipients, \$7.3 million. Average per Recipient: \$1.1 million.

3 Out-of-State Taxpayers, 4 In-State Taxpayers

Taxpayer Comparison: 6 stayed the same, 7 FY2008 dropped, 1 FY2009 added.

Incentive for Innovation and Growth (RIGL 44-63-3)

TAX CREDIT: A credit equal to 50% of any investment made in the company, but in no case shall the amount exceed \$100,000. Prior to passage of the FY2009 Budget, RIEDC was authorized to approve no more than \$2.0 million in credit applications during any two (2) calendar year period. This was changed to limit approvals to \$1.0 million during any two (2) calendar year period.

TAXES IMPACTED: The credit can be claimed against the Business Corporations Tax, Franchise Tax or the Personal Income Tax.

APPROVAL: RIEDC

CRITERIA: “Only companies with business primarily in those industries or trades, identified by the corporation upon advisory resolution of the Rhode Island Science and Technology Advisory Council as ‘Innovation Industries’ producing traded good or services, shall be eligible for the Incentives for Innovation and Growth.” As currently identified companies must be categorized as one of the following innovation industries: Biotechnology and Life Sciences; Communication and Information Technology; Financial Services; Marine and Defense Manufacturing; Professional, Technical and Educational Services; Industrial and Consumer Product Manufacturing and Design. "Qualified innovative company" means any business entity formed or registered to conduct business under the laws of the state of Rhode Island that ... has in the prior two (2) calendar years had annual gross revenues of less than one million dollars (\$1,000,000).”

Under current law the tax credit is scheduled to sunset on December 31, 2016.

TOTAL REPORTED:

FY2008: 4 recipients, \$0.3 million. Average per Recipient: \$76,250.

0 Out-of-State Taxpayers, 4 In-State Taxpayers

FY2009: 5 recipients, \$0.5 million. Average per Recipient: \$90,000.

0 Out-of-State Taxpayers, 5 In-State Taxpayers

Taxpayer Comparison: 1 stayed the same, 3 FY2008 dropped, 4 FY2009 added.

Jobs Development Act (RIGL 42-64.5)

TAX CREDIT: Non Telecommunications Companies – The credit is calculated by multiplying 0.25% by the number of units of new employment for the third taxable year following the base employment period. The rate reduction is limited to 6%. Telecommunications Companies – The credit is calculated by multiplying 0.1% by the number of units of new employment for the third taxable year following the base employment period. The rate reduction is limited to 1%.

TAXES IMPACTED: The “credit” or rate reduction can be applied to the current tax rates of 9.0% for business corporations, financial institutions; 2.0% on insurance companies; and 5% on telecommunication companies. Example -- A large business corporation who has 1,200 new FTEs therefore has 24 units of new employment ($1,200 / 50 = 24$). Each unit multiplied by 0.25% means a rate reduction of 6%. This company’s corporate income tax rate is reduced from 9% to 3%. This would be a 66.6% reduction in the tax rate.

APPROVAL: RIEDC

CRITERIA: For small businesses, defined as less than 100 Full Time Equivalent (FTE) employees a unit of employment is the number of FTE employees divided by 10. For all other businesses a units of employment is the number of FTE employees divided by 50. A FTE is defined as one who: (1) works a minimum of 30 hours per week within the State, or two or more part-time employees whose combined weekly hours equal or exceed thirty 30 hours per week within the State; and (2) earns no less than 150% of the hourly minimum wage prescribed by Rhode Island law. As of January 1, 2007 the Rhode Island Minimum Wage is \$7.40 per hour. Therefore 150% of that wage is \$11.25 per hour. At 40 hours per week this is an annual wage of \$23,088.

The 2009 Session of the Rhode Island General Assembly made two major changes to the Jobs Development Act. First, the article modified the definition of a “Full-Time Equivalent Active Employee.” For eligible companies qualifying on or after July 1, 2009 the term “full-time equivalent active employee” means any employee who: (1) works a minimum of thirty (30) hours per week within the state; (2) earns healthcare insurance benefits, and retirement benefits; and (3) earns no less than two hundred fifty percent (250%) of the hourly minimum wage prescribed

by Rhode Island law. For existing eligible companies qualifying before July 1, 2009, any new "full-time equivalent active employee," who replaces an existing "full-time equivalent active employee," shall meet the above requirements. As of January 1, 2007 the Rhode Island Minimum Wage is \$7.40 per hour. Therefore 250% of that wage is \$18.50 per hour. At 40 hours per week this is an annual wage of \$38,480. The second changes states that on or before September 1, 2009 all eligible companies shall file an annual report with the Division of Taxation containing each "Full-Time Equivalent Active Employee" as of July 1, 2009.

TOTAL REPORTED:

FY2008: 11 recipients, \$16.3 million. Average per Recipient: \$1.5 million.

7 Out-of-State Taxpayers, 4 In-State Taxpayers

FY2009: 10 recipients, \$14.2 million. Average per Recipient: \$1.4 million.

4 Out-of-State Taxpayers, 6 In-State Taxpayers

Taxpayer Comparison: 6 stayed the same, 5 FY2008 dropped, 4 FY2009 added.

Distressed Areas Economic Revitalization Act – Enterprise Zones (RIGL 42-64.3)

TAX CREDIT: A credit equal to fifty percent (50%) of the total amount of wages paid to those enterprise job employees comprising the five percent (5%) new jobs or 75% of the total amount of wages paid to those enterprise job employees who live in the enterprise zone comprising the five percent (5%) new jobs.

TAXES IMPACTED: One of the following: Business Corporations Tax, Public Service Corporations Tax, Financial Institutions Tax, Insurance Companies Tax, and Personal Income Tax.

APPROVAL: The "enterprise zone council" within the RIEDC.

CRITERIA: "Qualified business" or "business facility" means any business corporation, sole proprietorship, partnership or limited partnership or limited liability company which hires a minimum of 5% new or additional enterprise jobs or in the case of a company having 20 employees or less, this requirement shall be that the company create and hire one new or additional enterprise job. "Enterprise job employees" means that full-time employee whose business activity originates and terminates from within the enterprise zone business and facility on a daily basis, and who are domiciled residents of the state. Does not require that benefits be provided to employees. Does not require employees to be paid above minimum wage.

TOTAL REPORTED:

FY2008: 88 recipients, \$1.6 million. Average per Recipient: \$17,689.

5 Out-of-State Taxpayers, 83 In-State Taxpayers

FY2009: 58 recipients, \$1.1 million. Average per Recipient: \$18,396.

2 Out-of-State Taxpayers, 56 In-State Taxpayers

Taxpayer Comparison: 23 stayed the same, 65 FY2008 dropped, 35 FY2009 added.

Mill Building and Economic Revitalization Act (RIGL 42-64.9)

TAX CREDIT: Employee Credit -- Allows a taxpayer who owns and operates an "eligible business" in a substantially rehabilitated "certified building" a tax credit of up to \$3,000 per qualified employee. Construction Credit – Allows a specialized investment tax credit of 10.0% for rehabilitation and reconstruction costs of a certified building.

TAXES IMPACTED: Employee Credit -- Business Corporation Tax and Personal Income Tax. Construction Credit -- Business Corporation Tax, Taxation of Banks, Taxation of Insurance Companies, and Personal Income Tax.

APPROVAL: RIEDC

CRITERIA: "Eligible business" means any business corporation, sole proprietorship, partnership, or limited partnership or limited liability company which hires a minimum of 5% new or additional enterprise jobs or in the case of a company having 20 employees or less, this requirement shall be that the company create and hire one new or additional enterprise job. "Enterprise job employees" means that full-time employee whose business activity originates and terminates from within the enterprise zone business and facility on a daily basis, and who are domiciled residents of the state. Does not require that benefits be provided to employees. Does not require employees to be paid above minimum wage. "Certifiable building" is a mill complex or a building that was constructed prior to January 1, 1950 which is or will be used primarily for manufacturing, wholesale trade and other commercial purposes. The building must be proposed for substantial rehabilitation.

TOTAL REPORTED:

FY2008: 0 recipients, \$0. Average per Recipient: \$0.

0 Out-of-State Taxpayers, 0 In-State Taxpayers

FY2009: 0 recipients, \$0. Average per Recipient: \$0.

0 Out-of-State Taxpayers, 0 In-State Taxpayers

Taxpayer Comparison: 0 stayed the same, 0 FY2008 dropped, 0 FY2009 added.

Motion Picture Production Tax Credit (RIGL 44-31.2)

TAX CREDIT: Provides a tax credit of 25.0% of the state certified production costs incurred that are directly attributable to activity within the state provided that the primary locations are within the State of Rhode Island and the total production budget is at least \$300,000.

TAXES IMPACTED: The tax credit is transferable from the motion picture production company to other individuals or companies. Business Corporation Tax, Taxation of Banks, Taxation of Insurance Companies and Personal Income Tax.

APPROVAL: Rhode Island Film and Television Office

CRITERIA: "State certified production cost" means any pre-production, production and post-production cost that a motion picture production company incurs and pays to the extent it occurs within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified production costs" include: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services, including, but not limited to, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services, salary, wages, and other compensation, including related benefits, of persons employed, either director or indirectly, in the production of a film including writer, motion picture director, producer (provided the work is performed in the state of Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of

vehicles; costs of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or released or published by a person domiciled in Rhode Island; travel expenses incurred to bring persons employed, either directly or indirectly, in the production of the motion picture, to Rhode Island (but not expenses of such persons departing from Rhode Island); and legal (but not the expense of a completion bond or insurance and accounting fees and expenses related to the production's activities in Rhode Island); provided such services are provided by Rhode Island licensed attorneys or accountants. The 2008 General Assembly imposed a \$15.0 million cap on these credits claimed in any one future fiscal year.

TOTAL REPORTED:

FY2008: 4 recipients, \$12.8 million. Average per Recipient: \$3.2 million.

3 Out-of-State Taxpayers, 1 In-State Taxpayers

FY2009: 8 recipients, \$10.1 million. Average per Recipient: \$1.3 million.

4 Out-of-State Taxpayers, 4 In-State Taxpayers

Taxpayer Comparison: 2 stayed the same, 2 FY2008 dropped, 6 FY2009 added.

WHAT'S MISSING? PHASES TWO AND THREE

Phase Two – October 15, 2009 – Comprehensive Information Regarding the Costs and Benefits

At this time the Division of Revenue is to issue a report that includes the following information on each recipient of any tax credit listed above. To date the report that was due on October 15, 2008 on the FY2008 Tax Credits has not been issued. This report includes:

- Name of each recipient
- Dollar amount of each such tax credit
- Summaries of the number of full-time and part-time jobs created or retained
- Employee benefits provided
- The degree to which job creation and retention, wage and benefit goals and requirements have been met

The report shall also include the following on each category of tax credit:

- Aggregate dollar amounts for each category of tax credit and for each geographical area within the state
- Number of recipients within each category
- Number of full-time and part-time jobs created or retained
- Employee benefits provided
- The degree to which job creation and retention, wage and benefit rate goals and requirements have been met

Phase Three – January, 2010 – FY2011 State Budget

The FY2010 State Budget was to include phase three but it did not. The Director of the Department of Revenue shall provide to the General Assembly and public a comprehensive presentation on the costs of all tax credits that includes the cost to the state:

- During the preceding fiscal year
- Estimate of the anticipated costs
- Other tax incentives for the then-current fiscal year
- Estimate of the costs for the fiscal year of the requested budget

The budget shall also contain:

- Total cost to the state of tax expenditures
- Extent to which any employees of and recipients have received RIte Care or RIte Share benefits or assistance and the impact that any such benefits or assistance have on the state budget
- Cost to the state of all appropriated expenditures for such tax credits

The Poverty Institute looks forward to these additional reports which will provide even greater transparency and cost and benefit analysis of these tax expenditures for corporations.