McKenna Long & Aldridge LLP
Attorneys at Law

STATE OF GEORGIA INCENTIVE OPPORTUNITIES

Certain incentives are described below that may be available to a company proposing to construct a new project, such as a manufacturing, distribution or warehousing facility. To the extent that location is flexible, it may be possible to maximize incentives by having jurisdictions compete for the project. McKenna Long & Aldridge LLP has assisted several clients in maximizing incentives on its project in various counties throughout Georgia. In addition, McKenna Long has been involved in every Tax Allocation District to date in Georgia.

Incentives available in Georgia include the following, each of which is briefly described below:

- Job Tax Credit
- Other Statutory Tax Credits
- Sales Tax Exemption
- Property Tax Abatement
- Enterprise Zones
- One Georgia Authority
- Tax Allocation District Financing (know elsewhere as Tax Increment Financing)

Job Tax Credits ("JTC")

Georgia law provides a Job Tax Credit that is available to business enterprises that create and retain new full-time jobs in the State of Georgia. The amount of the credit based on the "Tier" of the County established by the Georgia Department of Community Affairs (GA DCA) --Tier 1 through Tier 4, Tier 1 Counties represent the State's least developed Counties.

- Tier 1 - $3,500/year/job
- Tier 2 - $2,500/year/job -- must create at least 10 jobs
- Tier 3 - $1,250/year/job -- must create at least 15 jobs
- Tier 4 - $750/year/job -- must create at least 25 jobs

The JTC available for five tax years in years two through six after the creation of the jobs. Business enterprises include businesses engaged in manufacturing and warehousing. Certain requirements must be met to qualify for the JTC, including that the average wages for the newly created jobs must

be above the average wage of the County that has the lower average wage of any County in the State (approximately $11.50/hour), and health insurance must be available to full-time employees.

The JTC may offset up to 100% of the taxpayer's Georgia income tax liability for Tier 1 and 2 Counties and 50% for Tier 3 and 4 Counties. Unused credits may be carried forward 10 years.

Investment Tax Credit (ITC)

The Investment Tax Credit is available to taxpayers that have operated an existing manufacturing support facility or sales office for at least 3 years. The credit is for investments in "qualified investment property," including all real and personal property acquired for use in the construction of manufacturing facilities in the state, including land acquisition, improvements and machinery and equipment used in manufacturing.
The amount of the credit (per $50,000 of investment) is based on the "Tier" of the County

- Tier 1 5% tax credit
- Tier 2 -- 3% tax credit
- Tier 3 and 4 -- 1% tax credit

The ITC may offset up to 50% of the taxpayer's Georgia income tax liability. Unused credits may be carried forward 10 years. To qualify for the credit, the Project plan must be submitted to Department of Revenue for approval.

Optional Investment Tax Credit

An Optional Investment Tax Credit may be chosen as an *alternative* to the ITC described above. The Optional ITC is available to taxpayers that have operated an existing manufacturing support facility (including a corporate or sales office) for at least 3 years

County	**Minimum Investment**	**% Tax Credit**
Tier 1	$ 5,000,000	10%
Tier 2	$10,000,000	8%
Tier 3	$20,000,000	6%

The Optional ITC allowable in any year is limited to 90% of the increase in tax liability over a base year average. The credit may be claimed for 10 years, provided that qualifying property remains in service throughout that period.

Other Tax Credits

Other Tax Credits that may be available include:

- Retraining Tax Credit
  Tax credits with respect to costs of retraining employees

- Child Care Credits
  Tax credits for employers who provide or sponsor child care for employees

- Research & Development Tax Credit
  Tax credits for employers who conduct research and development in Georgia

- Basic Skills Education Tax Credit
  Tax credits for costs of education that enhances reading, writing, or mathematical skills up to and including 12th grade level for employees

Sales and Use Tax Exemptions

Sales taxes are charged in Georgia on any "qualifying sale". Sales taxes run 5% to 7% depending on the County. Georgia law provides for an exemption from sales taxes for sales of certain machinery, as follows:

- Machinery used directly in the manufacture of tangible personal property when the machinery is incorporated for the first time into a new manufacturing plant located in Georgia.

- Primary material handling equipment and racking systems in a warehouse or distribution facility where the equipment is part of the development of a new facility worth $5,000,000 or more.

Property Tax Abatement

Unlike the case in most other states, the "uniformity clause" of the Georgia Constitution requires that all ad valorem taxation must be "uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Therefore, Counties in Georgia are generally prohibited from granting property tax abatement to private parties for economic development. However, there is a procedure whereby ad valorem tax relief can be granted to stimulate economic development that involves the sale of the facility to a public entity, such as a development authority, and the lease-back of the facility by the private party. The purchase by the development authority is "financed" through the issuance of bonds in an amount sufficient to acquire and construct the project. In a situation where the private party is internally financing the project, the bonds are generally bought and held by the private party or an affiliate. Under the lease from the development authority, the private party has full rights to acquire, construct, equip and operate the facility. At the end of the lease, the private party reacquires fee simple title to the project upon payment of a nominal sum, and the lease is terminated. There are no transfer taxes on the reconveyance of the property by the development authority to the private party upon termination of the lease.

Generally, ad valorem taxes in Georgia are based on the assessed value of the real and personal property. Assessed value is 40% of the fair market value. Fair market value is determined by the tax assessor and may take into account a depreciation factor applicable to the assets. To determine ad valorem taxes, the assessed value is multiplied by the millage rate in the County in which the property is located.

The amount of the property tax abatement is "negotiated" with the taxing authority, but usually begins with a significant reductions, increasing over the term of the Lease.

Example: 10-Year Lease

Lease Year	% of Ad Valorem Taxes
Year 1	10%
Year 2	20%
Year 3	30%
Year 4	40%
Year 5	50%
Year 6	60%
Year 7	70%
Year 8	80%
Year 9	90%
Year 10	100% - Lease Terminates

Some counties impose conditions on the private party as a condition to receiving the tax abatement -- usually (but not necessarily) counties that employ the second method -- such as requirements as to local employment, up-front payments, penalties for delay in completion of the project, and restrictions on transfer or assignment of the leasehold interest in the property.

One Georgia Authority

The **OneGeorgia** Authority utilizes one third of the state's tobacco settlement to assist the state's most economically challenged areas (Tier 1 and 2 counties, also Tier 3 counties if they adjoin a Tier 1 or 2 County and the project benefits the Tier 1 or 2 County). There are three difference funds from which **OneGeorgia** moneys can be obtained:

Edge Fund. The Edge Fund provides funds to local governments where a business enterprise is considering no less than two communities as a site for relocation or expansion, where at least one community is outside this state, and at least one, but not more than one, is in this state. Eligible uses for Edge Fund moneys include:

- Public Land Acquisition/Site Development
- Public Infrastructure Improvements
- Publicly Owned Machinery and Equipment
- Publicly Owned/Privately Leased Fixed Assets (sites and buildings) and/or Machinery and Equipment

Equity Fund. The Equity Fund provides financial assistance to local governments to finance activities that will assist applicants in promoting the health, welfare, safety and economic security of the citizens of the state through the development and retention of employment opportunities in areas of greater need.

Loan Fund. The Loan Fund provides loan assistance to localities that are being considered as a relocation or expansion site for a emerging or development-stage company in a strategic industry targeted by Georgia.

Enterprise Zones

Georgia's Enterprise Zone Employment Act was enacted in 1997 to provide a property tax exemption for a "business enterprise":

- 100% first 5 years
- 80% next 2 years
- 60% year 8
- 40% year 9
- 20% year 10

and to provide abatement or reduction in occupation taxes, regulatory fees, building inspection fees, and other fees that would otherwise be imposed. A "business enterprise" means, among other things, manufacturing, warehousing and distribution, and research and development. To qualify, a business enterprise must (1) create five or more new full-time jobs, (2) provide "economic stimulus" with sufficient quantity and quality determined by the local government and (3) when possible, 10% of new employees must be low and moderate income individuals.

To create an Enterprise Zone, the area must meet at least four of five criteria:

- Pervasive Poverty
- High Unemployment Rate
- Underdevelopment
- General Distress and adverse conditions (crime, etc.)
- General Blight

Tax Allocation Districts

In the 1960s and 1970s, federal and state governments began cutting back economic development programs that could be used to revitalize communities. This economic development incentive is referred to in Georgia as Tax Allocation District financing or TAD financing. In Georgia, a TAD is used to pay for infrastructure and other improvements in underdeveloped or blighted areas so that the property becomes productive and enhances the surrounding neighborhoods. As property within the TAD is redeveloped and improved, the City receives new property tax revenues as a result of the increased property values. This new revenue is used to make improvements in the TAD without raising taxes or dipping into the City's current tax revenues. The City's investment in the TAD is repaid through improved properties that become permanent sources of increased property tax revenues.

The City designates an area in need of redevelopment, adopts a redevelopment plan outlining how the area will be developed, and creates the TAD. The County Commission and School Board consent to including their share of the new tax revenues, or tax increment, in the TAD. The current value of the tax digest in the area is set as a base, and the City, County, and School Board continue

to receive tax revenues on that value for the life of the TAD. As vacant and dilapidated properties are developed, the property values within the TAD increase. New tax revenues from this increased value are placed into a special fund to pay for redevelopment costs or to finance bonds issued to fund capital improvements.

A TAD can be distinguished from an Enterprise Zone (discussed above). When an enterprise zone is created, property taxes are fully abated for the first five years and then gradually increased for the next five years. Conversely, when a TAD is created, property owners continue to pay property taxes at the full millage rate levied by the City and County. With a TAD, the local governments continue to receive the same amount of property taxes collected when the TAD was created. Any incremental increase in property tax revenues resulting from growth in property values within the TAD is deposited into the special fund for payment of redevelopment costs.