Maximizing Economic Incentives in an Evolving Market

COVID-19's impacts on businesses and economic development organizations are immense and evolving. The pandemic has forced companies to revisit existing economic incentive agreements, as well as evaluate additional cost-saving opportunities to help underwrite changes in real estate footprints. **Two of the most relevant and substantial incentive topics of the last two years remain in the forefront of incentive discussions—incentives monitoring and virtual employee incentives.**

Incentives Monitoring

Incentive agreements typically establish a long-term relationship between businesses and federal, state, local and other economic development organizations. Given the challenges that businesses continue to face, it is in the interest of all parties to review the obligations set forth in incentive contracts, be mindful of the relevant laws and program requirements, and understand the implications on current and future performance criteria. Below is a checklist for what businesses should be thinking about now amid our changing incentives landscape.

- **Review active incentive agreements for all locations, specifically looking for:**
  - **Transaction Milestones:** Document the value, conditions and ongoing oversight for each economic incentive accepted. Monitor the progress toward performance milestones.
  - **Default Provisions:** Examine contracts for clawbacks (provisions that allow organizations to reclaim incentive funds already paid out to the company) or clauses that outline what will happen if either party fails to hold up their end of the agreement.

Review any changes in headcount and capital expenditures:

- Evaluate key factors that are used to establish target incentives, including headcount growth, salary levels and capital investment.
- Changes to these key targets and corresponding deadlines can cause repercussions in incentive payouts.

Develop financial models to understand the potential risk of pending changes.

Create a near-term, medium-term and long-term incentives assessment addressing, at a minimum, the following questions:

- Do we need to add flexibility or time into our agreements?
- Are we in danger of defaulting on our commitments?
- If we default on one agreement, do we trigger defaults in other agreements?
- Are we going to meet our commitments?
- Are we going to exceed our commitments?

Update the business and leadership team on the status of your incentive agreements.

- Communicate the follow-up steps required to collect each incentive to help provide senior leadership with financial clarity.

Furthermore, it is imperative that companies consult with their auditors and tax accountants to ensure that they are in compliance with the new accounting standards released by the Financial Accounting Standards Board (FASB) effective for fiscal periods beginning after December 15, 2021. FASB's update requires more disclosure and greater transparency about what kind of assistance is received, how it is accounted for and how it affects a company's financial statements. All businesses, except for nonprofit entities and employee benefit plans, must now disclose the following about transactions with a government:

- Nature of the transactions and the form in which the assistance has been received
- Accounting policies used to account for the transactions
- Line items on the balance sheet and income statement that are affected by the transactions and the amounts applicable to each financial statement line item in the current reporting period
- Information about the significant terms and conditions of transactions with a government agency

While not acting as auditors or tax accountants, an experienced Location Incentives team can help clients prepare for the new FASB accounting rules for disclosing government incentives.

Case Study

CBRE's Location Incentives team provided annual incentives monitoring assistance for existing agreements & uncovered additional savings

Challenges & Opportunities

- The Client was seeking to expand its U. S. footprint, specifically evaluating options in Indiana and surrounding markets.
- As part of this initiative, the Client was seeking assistance with economic incentive negotiations, as well as the recurring incentives reporting required to capture the value negotiated.

Unique Solution

- Since our 2018 engagement, CBRE Location Incentives has helped manage the full scope of procurement, negotiation and ongoing monitoring of the Client's discretionary and statutory incentives structures.
- We deployed tools to monitor and track economic incentive milestones and assist in the preparation of relevant reports required for each of the incentives secured.
- During engagement on annual incentives monitoring for the existing agreements, CBRE was able to identify modifications to existing incentives deals, which led to an additional $10 million in incremental savings.

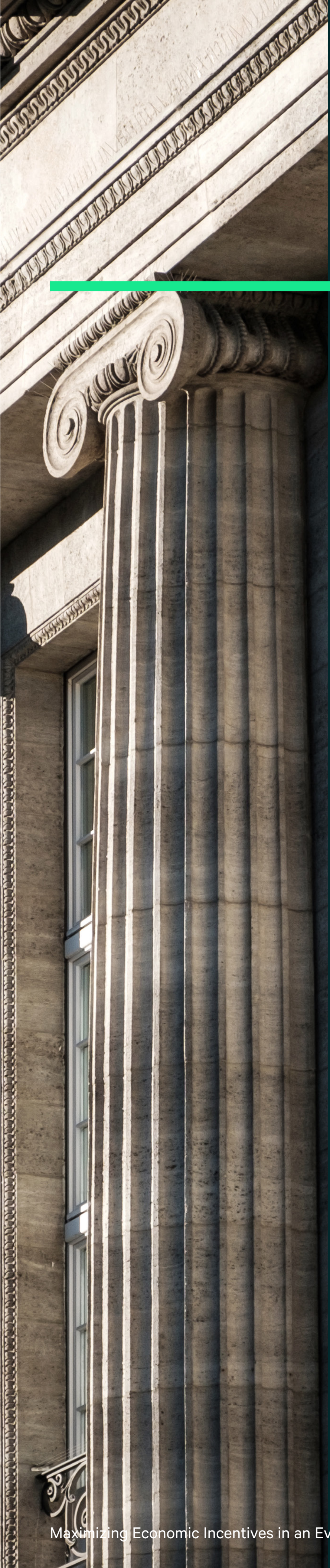
Virtual Employee Incentives

Economic development incentives provide an array of benefits strategically designed to promote new business activity, as well as encourage business and job retention. Most incentives are typically awarded based on net-new job creation, wages of new jobs and capital investment. As many companies have embraced hybrid work schedules and remote work, many states are adjusting their incentive policies to include virtual employees. The following table summarizes the U.S. states where virtual and hybrid employees currently qualify for incentives.[1]

State	Fully Remote Employees Qualify	Hybrid Employees Qualify	Details of Qualifications
Alabama		●	Employees working remotely can qualify for incentives; however, State programs typically require a project to have a physical workplace for their employees, even if it's just flex/meeting space. State incentives also require partnership from the local communities, so if there is not a primary workplace or any space at all, it could be difficult to receive local support.
Arizona		●	As long as minimum capital investment thresholds are met, employees working remotely can qualify for incentives if they are tied to a physical location.
Arkansas		●	While fully remote employees do not currently qualify for state incentive programs for companies without any physical location, if a company has a physical presence in the state with new employees reporting to the facility (although they may not work at the facility), employees may be counted if they meet the definition of "new full-time permanent employee," are subject to the Arkansas Income Tax Withholding Act, and meet an average hourly wage threshold equal to or greater than the state average hourly wage for the preceding calendar year.
California	●	●	California would consider an application with fully remote workers; however, that application may not be competitive with others that have large capital investments in facilities.
Colorado		●	A physical presence is required for state incentives since average wage thresholds for programs are based on where a company's facility or place of work is located. However, a small meeting space for employees could qualify, but employees would need to have their primary residency in Colorado, hold a Colorado driver's license, and pay income taxes only in Colorado. If employees are working under a hybrid work schedule and spend 2-3 days at the facility, they would be counted as eligible. If employees are working from home full-time, assigned to a facility, and are within a reasonable commuting distance, then they would be counted as eligible. The Location Neutral Employment (LONE) incentive provides an incremental cash incentive of up to $6,500 per remote employee per year for up to five years to companies that hire new employees in designated rural areas of the state.
Georgia	●	●	Georgia's Job Tax Credit (JTC) rules and guidelines have been amended to allow for newly created telecommuter employee positions to count only during tax years beginning in 2020 and 2021, so long as all other eligible employee qualifications are met. Georgia's Quality Jobs Tax Credit (QJTC) allows for remote employees to count, although the calculation/filing becomes more complicated if there is a large remote-working population.

[1] Source: CBRE Location Incentives and State Economic Development Agencies, 2022. Data current as of March 1, 2022. This list is not exhaustive and updates are continually being made.

State	Fully Remote Employees Qualify	Hybrid Employees Qualify	Details of Qualifications
Idaho		●	A major component of Idaho's Tax Reimbursement Incentive (TRI) program is that eligible employees must meet or exceed the county average wage in which they work or the physical location of a company (a fully remote project would struggle with TRI approval for this reason). The Business Advantage program also requires at least $500,000 of capital investment. However, if there was a physical location, remote employees would be able to count for at least the TRI program.
Indiana	Case-by-case basis	●	The Indiana EDGE program allows remote Indiana employees to count if they are part of an approved project. By statute, incentives are for eligible taxpayers, so if a company is considered a corporate taxpayer, a fully remote worker project could be considered. However, employees must be tied to a physical location or office in order to qualify for incentives.
Louisiana	●	●	Louisiana's Digital Media Incentive program does not have a physical location requirement. However, the Quality Jobs program still requires a physical location.
Missouri		●	As long as a facility is identified as the "project facility," all full-time employees who report to the facility for at least 51% of the time are eligible to be counted for the State's Missouri Works programs. Employees who do not report to the facility for at least 51% of the time and are instead working remotely may also be eligible for Missouri Works if they receive their direction and control from the project facility, spend some of their work time at the project facility during the year, are listed on the project facility's payroll, are paid at or above the county average wage, and the employee's full income from employment with the Company is Missouri income.
New Mexico		●	Remote employees can qualify for the Job Training Incentive Program (JTIP) so long as they are New Mexico residents and the company has a physical presence in the state.
Ohio	Case-by-case basis	Case-by-case basis	Typically a physical location is required for State incentive approvals, however, JobsOhio staff would consider fully remote and hybrid employee scenarios on a case-by-case basis.



Case Study

CBRE’s Location Incentives team provided incentives monitoring services to protect against clawback provisions caused by remote work arrangements

Challenges & Opportunities

– In response to the COVID-19 pandemic, our Client decided to shift to fully virtual working arrangements and sell its office location. As a result, our Client was at risk of clawback provisions for their existing incentives agreements.

Unique Solution

– Over five months, CBRE worked with city, county and state economic development officials to persuade legislators to make changes in incentives legislation that would allow work from home employees to count as employees at the project location address.

– This statutory change will enable our Client to collect $8.8 million in tax credits over the remaining seven years of the agreement.

– As a result, our Client avoids having to repay $6.4 million in tax credits it received over the past eight years. Due to our incentives monitoring services, the overall financial impact to our Client is $15.2 million.

A Note from CBRE Location Incentives:

All of us are operating in an environment unlike any we've experienced before, however CBRE provides knowledgeable incentive services to help our clients secure eligible benefits and cost savings. On average clients receive 10% to 25% of their capital budgets in potential economic incentive savings.[2] Working together, we can deploy our proprietary tools and proven processes to identify opportunities, model scenarios, monitor incentives and make sound recommendations that align with our clients' business objectives.

[2] Client results may differ depending on individual circumstances.

Contact

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