

Economic Development Incentives

Jackson, Tennessee
May 22, 2008

Presented by:
J. Thomas Trent, Jr.
Joseph W. Gibbs



IDB Board Membership Requirements

- **Qualified elector and taxpayer in municipality creating Board**
- **If a closed or substantially downsized Federal facility is located in the municipality, a minority of Board may be non-residents**
- **Members of chamber of commerce, board of trade or similar civic group (unless none are available and suitable)**
- **7 or more members required**
- **No officers or employees of the municipality**

Terms of Service on Board

- **Staggered six-year term**
- **Approximately 1/3 of terms expiring every other year**
- **No term limits for Board members**
- **Unpaid, but can have costs reimbursed**

IDB – Projects

■ “Projects”

- IDBs can own or finance projects, including:
 - Manufacturing, assembling, warehousing and distribution
 - Canal, port, parking & railroad
 - Commercial enterprises
 - Office buildings
 - Certain healthcare and educational facilities
 - Certain recreational facilities, theme or amusement parks
 - Low or moderate income, elderly or handicapped multifamily housing
 - Planetariums or museums
 - Hotels and motels (with restrictions)
 - Pollution control, coal gasification & energy production
 - Farming, ranching and Ag. Transport or storage

General Board Powers

- **Acquire Projects (by purchase, exchange, gift lease or otherwise)**
- **Improve, maintain, equip and furnish Projects**
- **Lease Projects, collect rent and apply to indebtedness of the Corporation**
- **Sell Projects**
- **Enter into loan agreements relating to Projects**
- **Sell, exchange, convey or donate any or all of its properties**

General Board Powers (continued)

- **Issue bonds or otherwise borrow money from banks or other financial institutions**
- **Mortgage or pledge any or all of its Projects as security for payment of any bonds or notes**
- **Pledge revenues and receipts from Projects**
- **Employ and pay compensation to employees and agents**
- **Conduct all powers expressly given under the Board's Charter**

Warning!

- **Check the Charter of the City/County**
- **Check the Charter of the Industrial Development Board**

Special Provisions

- **Cannot pledge the general taxing power of the municipality**
- **Cannot operate Projects**
- **All Board meetings must comply with open meetings and open record laws**

Payment in Lieu of Tax "PILOT"



Taxation of Property

- **The Tennessee Constitution sets forth several restrictions concerning the taxation of property that:**
 - Require “all real and personal property to be subject to taxation.”
 - And with certain limited exceptions, prohibit the creation of additional exemptions.
- **Consequently, Cities and Counties in Tennessee may not grant tax abatements to non-exempt persons.**

Taxation of Property

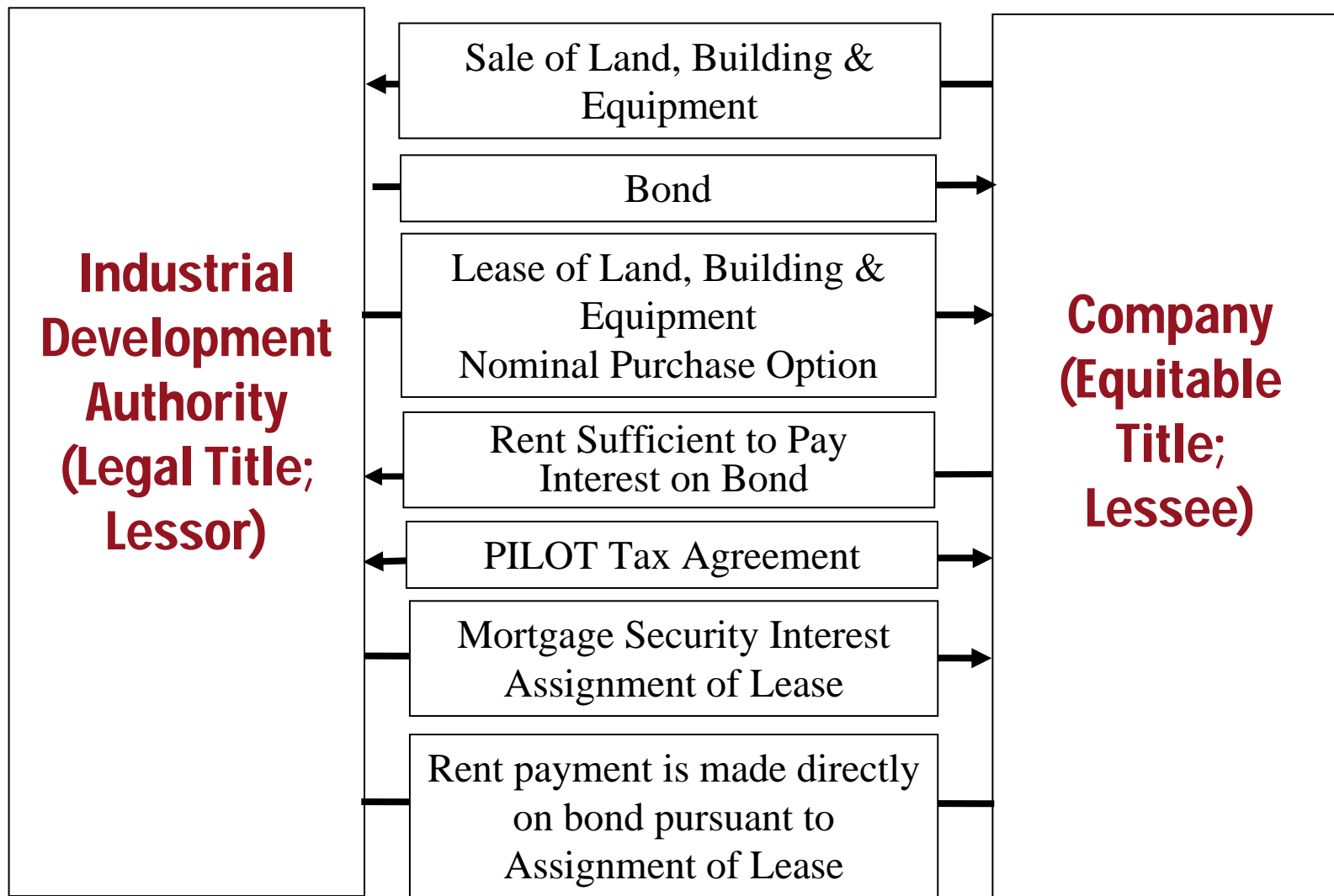
- **Role of Industrial Development Corporations in Property Tax Abatements**
 - Property owned by an Industrial Development Board is exempt from property tax.
 - The Board may enter into payment in lieu of tax agreements, if authority is delegated to it.

Taxation of Property

- **Constitutional Compliance**

- The Industrial Development Corporation Act does not violate the requirement of the Constitution that all property be subject to taxation.

Basic IDB Sale Leaseback



Taxation of Real Property & Equipment

■ Real Property

- Real property owned by the Industrial Development Board is exempt from property tax.
- Taxation of Leasehold Interests
 - A leasehold interest is subject to tax when the fee owner of real property, including an Industrial Development Board, is exempt from tax.
 - The value of a leasehold is based on the excess of the fair market rent for the property over the actual and imputed rent payable under the lease for the property.

PILOT Leases

- **PILOT leases must be designed to minimize leasehold value.**
 - Even if a lease is structured so that no leasehold value results, changing circumstances can result in a leasehold value over the term of the lease e.g.:
 - Variable interest rate on the bonds.
 - Increases in market rent.
 - Catch-up provision in the PILOT agreement.

Personal Property

- **Taxation to Lessee**

- Leased personal property owned by an Industrial Development Board is not subject to tax if the property is subject to a PILOT agreement.

Summary

■ Land

- If the Industrial Development Board owns the land and improvements and leases the land and improvements to the Company, the land and improvements will not be subject to tax, although the Company's leasehold interest may be assessed if the lease is not properly structured.

■ Equipment

- If the Industrial Development Board owns the equipment and leases the equipment to the Company, the equipment will be exempt from tax if the Board and the Company enter into a payment in lieu of tax agreement.

PILOT Complications

- Existing Secured Loan
- Sale of Company, Buyer's Lender Requires Security
- New Secured Loan
- Lender Requires Company Equity

PILOT Complications

- **Expansion of Existing Building**
 - Separate Calculation of Abatement and PILOT
 - Separate tax parcel for addition
 - Create a formula based on valuation
 - Declining abatement adds complexity

PILOT Complications

■ Equipment Issues

- Ramp-up and Equipment Purchases
 - Loss of CIP Benefits
 - Determination of Abatement Percentage
 - Transfer of Legal Title to IDB

PILOT Complications

- **Developer-Owned Projects**
- **Equipment Financed by Equipment Leasing Company**

PILOT Paperwork - Regulatory Compliance in the IDB Program

- **Leasehold assessments**
- **Filing PILOT agreements**
- **Cost benefit analysis**
- **State's interest determination**
- **Annual report of lessees**

IDB Growing Pains

- **Requiring city-county cooperation**
- **Preserving education levy**
- **Duration limits**

Tax Increment Financing "TIFs"



Tax Increment Financing (“TIF”) Programs in Tennessee

- **Convention Center and Tourism Development**
- **Industrial Development Boards**
- **Housing Agencies and Municipally Sponsored Community Redevelopment Agencies**
- **Comparison of PILOTS to TIFS**

TIF Financing Overview

- **Project Financing**
- **Repaid from incremental increase in property tax**
- **Concept is that “Increment” is new money and does not reduce the current tax collected**

TIF Example

- **Predevelopment Assessment = \$1,000,000**
- **Post-Development Assessment = \$5,000,000**
- **Tax Rate = \$4.50/\$100 of Assessed Value**
- **Base Tax Amount Paid to Taxing Authority:**
 - = \$1,000,000 Predevelopment Assessment x Tax Rate = \$45,000
- **Tax Increment:**
 - \$5,000,000 Post-Development Assessment - \$1,000,000 Predevelopment Assessment x Tax Rate = \$180,000
- **Present Value @ 6% ≈ \$2,475,000 (30 year term)**

Convention Center and Tourism Development TIFs

- **Tourism Development Zones (“TDZ”)**
 - 1 mile radius of Qualified Public Use Facility
 - Expanded to 3 miles with Department of Finance approval
 - Sales and Use Tax Fund Financing
 - Sunset – TDZ approved or application submitted by 6/26/07

Convention Center and Tourism Development TIFs

■ Uses

- Qualified Public Use Facilities
 - Convention center of at least 250,000 SF, \$75 million in public funds
 - Bible Theme Park
- Qualified Associated Development
 - Roads, bridges, parking lots, parking decks, plazas, parks attached or adjacent to Qualified Public Use Facilities
 - Infrastructure serving development within TDZ

IDB TIFs – Economic Impact Plans

An Industrial Development Board (“Board”) is authorized, through the adoption of an economic impact plan (“Plan”), to designate an area (“Economic Impact Area”) with respect to which the Board is entitled to receive the incremental property tax.

IDB TIFs – Economic Impact Plans

■ Allocation of Property Taxes

- Allocation of Base Tax Amount -

That portion of the taxes that is equal to the amount of taxes payable with respect to the property in the Economic Impact Area for the **year preceding the adoption of the Plan** ("Base Tax Amount"), is allocated to the city and county levying the property tax, not to exceed the taxes actually imposed.

- Allocation of Excess Amount -

The excess of the property taxes imposed over the Base Tax Amount is allocated to the Board.

The Plan may allocate an amount greater than the Base Tax Amount to the city and county.

IDB TIFs – Economic Impact Plans

■ Use of Taxes by the Board

- Taxes allocated to the Board typically are to be applied to pay debt service on bonds or other obligations issued by the Board to pay the cost of the projects.
- The Board is authorized to pledge the taxes to be received by the Board to secure payment of the bonds.

IDB TIFs – Economic Impact Plans

- **The Economic Impact Area must:**
 - be located in the municipality that created the Board; and
 - also must include either:
 - an industrial park within the meaning of T.C.A. §13-16-202; or
 - a project that is either owned by the Board or with respect to which the Board has loaned or will loan funds or has otherwise provided or will provide financial assistance

IDB TIFs – Economic Impact Plans

■ A Plan is required:

- To specifically identify the area to be included in the plan;
 - The boundaries of the area subject to the Plan; and
 - Identify the industrial park or project located within the Economic Impact Area subject to the Plan
- To discuss the expected benefits to the municipality from the development of the Economic Impact Area subject to the Plan; and
- A Plan is not permitted to provide for an allocation of taxes to the Board for a period in excess of thirty (30) years.

IDB TIFs – Economic Impact Plans

■ Approval by IDB and Municipality

- The Board must hold a public hearing after giving two weeks notice before submitting the Plan to the municipality.
- The governing body of the municipality that created the Board must approve the Plan.
- For taxes collected within the Economic Impact Area by the county or another municipality, the governing body of the county or other municipality must approve the Plan.

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

- **Tennessee Housing Authorities Law (the “Housing Law”) Provides for:**
 - The Creation of Redevelopment Agencies -
 - Redevelopment Plans - and/or an “urban renewal plans” to address “blighted areas” within a redevelopment district

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ Tax Increment Revenue –

- The Municipality and the County retain an amount an equal to the Base Assessment (i.e. the assessment based on value of the property **before the Redevelopment Agency's acquisition of the property**), multiplied by the tax rate adopted for the current tax year.
- The balance of taxes collected is paid to the Redevelopment Agency and can be pledged to secure TIF Financing.

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ Adoption of Redevelopment Plan

- Redevelopment Plans with TIF authority must be approved by the Redevelopment Agency, the municipality and the County in which the Redevelopment District is located.
- The total amount of authorized TIF Financing is established when each Redevelopment Plan is approved or amended, as applicable.

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ TIF Loan Structures

- The Redevelopment Agency is always the borrower.
- Developer is responsible for arranging the TIF Financing.
- TIF loans are without recourse to the Redevelopment Agency or the local government.
- The TIF Financing is secured by the Redevelopment Agency's pledge of Tax Increment Revenues arising from a Redevelopment Project for a specific period of time.

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ TIF Loan Structures (Continued)

- The Redevelopment Agency may acquire title to each redevelopment parcel for an agreed value (not more than market) and then “write down” the land by selling the land to a developer for its “use value.” The developer’s purchase price is often nominal.
- Developer acts as Redevelopment Agency’s agent to undertake certain activities or make improvements that are “eligible” for TIF expenditures.

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ Eligible Uses

- Acquisition of blighted areas or other real property for the purpose of removing, preventing or reducing blight
- Acquisition of real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions, prevent a proper development of the property
- Site clearance and site preparation (including utility and street construction and relocation)
- Remediation of any environmental contamination

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ Eligible Uses (Continued)

- Parks, public open spaces,
- Relocation expenses, administrative costs, planning and engineering costs and legal expenses associated with carrying out a Redevelopment Plan
- Construction period interest on TIF Financing (i.e. interest due before the TIF revenue is generated) is generally considered an eligible expense

Redevelopment TIFs

Redevelopment and Urban Renewal Plans

■ TIFS In Action - Not Just Housing

- Residential - Apartments and Condominiums (often with mixed use component) - Most Common
- Office
- Retail
- Restaurants
- Manufacturing
- Other –Parking Garages

Comparison – TIFs and PILOTs

■ Term

- PILOT – 20 yr
- IDB TIF – 30 yr
- Redevelopment TIF – Term of Redevelopment District

Comparison – TIFs and PILOTs

■ Title to Property

- PILOT – Convey project to IDB
- IDB TIF – Company owns project
- Redevelopment TIF – Company owns project

Comparison – TIFs and PILOTs

■ Property Affected

- PILOT – Covers project only
- IDB TIF – Covers economic impact area
- Redevelopment TIF – Covers Redevelopment District

Comparison – TIFs and PILOTs

■ Required Approvals

- PILOT – Municipal approval of PILOT program plus IDB approval (no county approval)
- IDB TIF – Municipal, county and IDB approval of each economic impact plan
- Redevelopment TIF – Municipal, county and housing authority approval of financing plan

Comparison – TIFs and PILOTs

■ Taxation of Leasehold

- PILOT – Real estate may have leasehold assessment
- IDB TIF – N/A
- Redevelopment TIF – N/A

Comparison – TIFs and PILOTs

■ Eligible Property

- PILOT – Any project (greenfield)
- IDB TIF – Any project (greenfield)
- Redevelopment TIF – Within blighted area

Tennessee Tax Incentives



Tennessee Tax Overview

■ Franchise Tax

- Tax on the greater of net worth or book value of property owned or used in Tennessee.
- Tax rate is .25¢ per \$100.

■ Excise Tax

- Tax is based on the net earnings of the company derived from doing business in Tennessee.
- Tax rate is 6.5%

■ Sales and Use Tax

- 7% state tax rate plus the applicable local rate (2.25% - 2.75%) on the sale or use of tangible personal property and certain enumerated services.

Summary of Major Tax Credits and Exemptions

- **Jobs Tax Credit (67-4-2109(c))**
- **Jobs Tax Super Credit (67-4-2109(c)(2)(H) & (I))**
- **Industrial Machinery Tax Credits and Exemptions (67-4-2009(4) & 67-6-206)**
- **Headquarters Relocation Tax Credits (67-4-2109(h) & 67-6-224)**
- **Green Energy Supply Chain Manufacturer Tax Credits (67-4-2109(n))**

Highlights of Jobs Tax Credit

- **A one-time credit against a company's combined Franchise and Excise tax liability.**
- **Unused credit can be carried forward for up to 15 years.**
- **A company investing \$500,000 and creating 25 new jobs can claim a \$2,000 credit per job created.**
- **If the company locates in an economically distressed county, the credit increases to \$4,500 per job created and an additional annual credit is allowed for a period of 3 years or 5 years depending on the category to which the particular county is assigned.**

Highlights of Jobs Tax Credit

- **The percentage of the combined Franchise and Excise tax liability that may be offset ranges from 33.33% to 100% based on the number of jobs created.**
- **Amount of credit increases to \$5,000 per job if the company qualifies for the Jobs Tax Super Credit. (See Jobs Tax Super Credit).**

Highlights of Jobs Tax Credit

Credit for Job Tax Credit in Non-Economically Distressed counties (Shelby, Davidson, Montgomery, Wilson, Williamson, Knox and Hamilton)

<u>Jobs Created</u>	<u>Amount of Credit</u>	<u>Percentage of Offset</u>
25	\$50,000 (\$2,000/job)	33.33%
100	\$200,000 (\$2,000/job)	33.33%
500	\$1,000,000 (\$2,000/job)	33.33%
999	\$1,998,000 (\$2,000/job)	33.33%
1,000	\$2,000,000 (\$2,000/job)	50%
3,000	\$6,000,000 (\$2,000/job)	75%
5,000	\$10,000,000 (\$2,000/job)	100%

Highlights of Jobs Tax Credit

Credit for Job Tax Credit in Economically Distressed counties (all counties except Shelby, Davidson, Montgomery, Wilson, Williamson, Knox and Hamilton)

<u>Jobs Created</u>	<u>Amount of Credit</u>	<u>Percentage of Offset</u>
25	\$112,500 (\$4,500/job)	33.33%
100	\$450,000 (\$4,500/job)	33.33%
500	\$2,250,000 (\$4,500/job)	33.33%
999	\$4,495,500 (\$4,500/job)	33.33%
1,000	\$4,500,000 (\$4,500/job)	50%
3,000	\$13,500,000 (\$4,500/job)	75%
5,000	\$22,500,000 (\$4,500/job)	100%

Highlights of Jobs Tax Super Credit

- **Applies to companies investing capital of \$100 million or more and creating a minimum of 100 jobs paying at least 100% of Tennessee's average occupational wage.**
- **Offset up to 100% of the company's combined Franchise and Excise tax liability.**
- **Credit begins in the year after the jobs creation and capital investment thresholds have been met.**
- **Annual credit for a duration based on capital investment, but any unused credit cannot be carried forward.**

Highlights of Jobs Tax Super Credit

- **Though related, this credit is in addition to the regular Jobs Tax Credit.**
- **Companies that qualify for the Jobs Tax Super Credit exclude two-thirds of the required capital investment for purposes of determining the book value of the company's real and tangible property for franchise tax purposes.**
- **If the company meets the jobs creation and capital investment thresholds, the Jobs Tax Credit amount is increased to \$5,000 per qualifying job.**

Highlights of Jobs Tax Super Credit

Levels of Jobs Tax Super Credit

<u>Capital Investment</u>	<u>Jobs Created</u>	<u>Size of Credit (per job, per year)</u>	<u>Years Available</u>
\$100 Million	100	\$5,000	3
\$250 Million	250	\$5,000	6
\$500 Million	500	\$5,000	12
\$1 Billion*	1,000*	\$5,000*	20*

*Projects qualifying in this category must create jobs paying 150% of the state's average occupational wage.

Highlights of Jobs Tax Super Credit

- **The 2007 amendments to the Jobs Tax Credit provide that companies that make a required capital investment of at least \$10,000,000 and create at least 100 net new full-time jobs that pay at least 150% of the average occupational wage also qualify for a \$5,000 per job tax credit and annual credits for a three-year period.**
- **The 2008 amendments extend the Jobs Tax Super Credit to integrated suppliers located within the “footprint” of a project site of a company that makes a required investment of at least \$1,000,000,000.**

Highlights of Industrial Machinery Tax Credit and Exemption

- Tennessee offers manufacturers a credit offsetting up to 50% of the company's combined Franchise and Excise tax liability for capital investments in industrial machinery. Unused credit may be carried forward for 15 years.
- No jobs creation required.
- Credit equals a percentage of the cost of the purchase, repair and installation of "industrial machinery."

Highlights of Industrial Machinery Tax Credit and Exemption

- Recapture provision applies if company fails to meet capital investment requirement during the investment period.
- Credit Amount:

<u>Capital Investment</u>	<u>Percentage Credit</u>
Less than \$100 Million	1%
\$100 Million	3%
\$250 Million	5%
\$500 Million	7%
\$1 Billion	10%

Highlights of Industrial Machinery Tax Credit and Exemption

■ Sales and Use Tax Exemption

- Industrial machinery purchased or used by the taxpayer is exempt from Sales and Use tax.
- Water sold to or used by a manufacturer subject to a special state Sales and Use tax rate of 1%.
- Electricity, gas and fuel oil sold to or used by a manufacturer is subject to a special state Sales and Use tax rate of 1.5%.

Highlights of Industrial Machinery Tax Credit and Exemption– Qualified Data Centers

- **A qualified data center is defined to be data center that has made a required capital investment in excess of \$250,000,000 during an investment period not to exceed 3 years and that creates at least 25 net new full-time employee jobs during the investment period paying at least 150% of the state's average occupational wage.**

Highlights of Industrial Machinery Tax Credit and Exemption– Qualified Data Centers

- **Industrial machinery includes computers and associated equipment used in the operation of a “qualified data center,” and therefore purchases of such equipment qualify for the industrial machinery credit.**
- **The special 1.5% sales tax rate applicable to manufacturers is extended to electricity used by a qualified data center.**

Highlights of Headquarters Relocation Tax Credit

■ Franchise and Excise Tax Credit

- Credit against combined Franchise and Excise tax liability for the qualified headquarters facility relocation expenses incurred by the taxpayer for establishing a qualified headquarters facility in Tennessee.
- Any amount of the credit that exceeds the taxpayer's combined Franchise and Excise tax liability will be refunded to the taxpayer as an overpayment.
- Recapture provision applies if company fails to meet capital investment requirement during the investment period.

Highlights of Headquarters Relocation Tax Credit

- Credit for the cost of relocating jobs paying at least 150% of Tennessee's average occupational wage are available on a tiered schedule as follows:

<u>Jobs Created and Capital Investment</u>	<u>Tax Credit Per Job Created</u>
\$1 Billion and at least 1,000 new qualified jobs	\$50,000
\$10 Million and at least 750 new qualified jobs	\$40,000
\$10 Million and 500 – 749 new qualified jobs	\$30,000
\$10 Million and 250 – 499 new qualified jobs	\$20,000
\$10 Million and 100 – 249 new qualified jobs	\$10,000

Highlights of Headquarters Relocation Tax Credit

■ Sales and Use Tax Credit

- Partial credit against the company's Sales and Use tax liability of a taxpayer that established a qualified headquarter facility in Tennessee.
- Credit against the state Sales and Use tax (excluding local option rate) except tax at the rate of 0.5% on the sale or use of qualified tangible personal property.
- A taxpayer must make either (i) a capital investment of at least ten million dollars (\$10,000,000) in a building or buildings, either newly constructed, expanded or remodeled, and create at least one hundred (100) new full-time employee jobs that pay at least one hundred fifty percent (150%) of Tennessee's average occupational wage created during the investment period or (ii) a capital investment of fifty million dollars (\$50,000,000) in a building or buildings, either newly constructed, expanded or remodeled, without the requirement to create any jobs.

Highlights of the Green Energy Supply Chain Manufacturer Tax Credits

- **Two Credits**
 - Green Energy Tax Credit
 - Carbon Charge Tax Credit
- **Credits apply to “certified green energy supply chain manufacturers”**
 - “Certified green energy supply chain manufacturer” means any manufacturer that has made a required capital investment in excess of \$250,000,000 in constructing, expanding or remodeling a facility that is certified by the commissioner of revenue, the commissioner of economic and community development and the commissioner of environment and conservation, in their sole discretion, to be a facility engaged in manufacturing a product that is necessary for the production of green energy.

Highlights of the Green Energy Supply Chain Manufacturer Tax Credits

- Required capital investment must be made during the “investment period” defined as period not exceeding 3 years from the filing of the business plan related to qualification as a certified green energy supply chain manufacturer.
- May be extended by the Commissioner of Economic and Community Development for “good cause shown.”

■ Ordering of Credits

- Green energy tax credit applies after all other franchise and excise tax credits.
- Carbon charge tax credit applies after the green energy tax credit

Highlights of the Green Energy Supply Chain Manufacturer Tax Credits

- **Highlights of Green Energy Tax Credit**
 - Credit Against Combined Franchise and Excise Tax
 - Credit equals the amount by which the “charge for electricity sold” exceeds the charge that would have been made for such total delivered electricity if the “maximum certified rate” had been applied during the applicable tax year.
 - “Charge for electricity sold” equals the total amount due as shown on the customer’s electricity bills over the applicable tax year, less any carbon charge included in the bill to the extent such carbon charge is included in the carbon charge credit.
 - “Maximum certified rate” is a per kilowatt hour rate that is established through the issuance of a private letter ruling by the Commissioner of Revenue.

Highlights of the Green Energy Supply Chain Manufacturer Tax Credits

■ Highlights of Green Energy Tax Credit

- If this credit exceeds the combined franchise and excise tax, the amount of the excess shall be considered an overpayment and shall be refunded to the taxpayer to the extent that the refund does not exceed (for any 1 tax year) an amount equal to \$1,500,000 per each \$250,000,000 in cumulative capital investments made.
- To the extent any credit amount is not applied to the taxpayer's liability and not received as a refund, such credit may be carried forward in perpetuity.
- The credit provision expires January 1, 2029, but does not preclude the use of a credit generated in prior years.

Highlights of the Green Energy Supply Chain Manufacturer Tax Credits

■ Highlights of Carbon Charge Tax Credit

- Credit Against Combined Franchise and Excise Tax
 - Credit equals any “carbon charge” incurred by or imposed on the certified green energy supply chain manufacturer during the applicable tax year.
 - If this credit exceeds the combined franchise and excise tax, the amount of the excess shall be considered an overpayment and shall be refunded to the taxpayer.
 - “Carbon charge” means a tax or fee imposed or levied by the federal or state government, the purpose of which is to reduce emission of greenhouse gases. The “carbon charge” includes any taxes, emissions fees, or required purchases of carbon or emission off-sets or credits.