Illinois Job Tax Credit Gives State the 'EDGE' in Relocations and Expansions

By David A. Hughes and Benjamin W. Wong

In a tight job market, companies wishing to remain competitive often offer bonuses and other incentives to entice high-quality workers to join their workforce. Similarly, states seeking to attract businesses contemplating relocation or expansion frequently offer the companies incentive packages to persuade them to locate or expand in their particular state.

For many years, Illinois has been losing companies to other states that offered more attractive incentives. In an effort to curb this trend, Illinois recently enacted the Economic Development for a Growing Economy Tax Credit Act ("EDGE")[1], administered by the Illinois Department of Commerce and Community Affairs (DCCA). The EDGE tax credit[2] provides a nonrefundable credit against the state corporate income tax based on the personal income tax payments of newly hired employees. The EDGE program empowers DCCA to determine both the length of the subsidy (up to a ten-year maximum, or, for eligible companies, 15 years[3]) and the amount of the personal income tax payments that are applied to the credit.[4]

Although the program has been around only a short time, the latest statistics indicate that the EDGE tax credit has been successful in creating and retaining Illinois jobs. Since EDGE's inception in August 1999, DCCA has approved 57 EDGE applications, which resulted in more than 8,600 new jobs, nearly 4,000 retained jobs, and an investment of approximately $1.15 billion in the state.[5] In addition, Illinois has realized a better than 7-1 return on investment for the tax credit granted to companies under EDGE. A total of $15 million in EDGE tax credits has been granted, while the companies receiving the credits have generated additional state and local taxes of, respectively, $60 million and $55 million.[6]

One more business that Illinois can count on to add to this list is The Boeing Company. In May 2001, Boeing announced that it will relocate its corporate headquarters from Seattle to Chicago. Before Boeing settled on Illinois, it

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1 Codified at 35 ILCS § § 10/5-1 to 10/5-90.

2 35 ILCS § 5/211.

3 Under new legislation, the extended EDGE tax credit increases the statutory length of the credit from ten years to 15 years for an eligible company that, among other things, has annual worldwide revenues of at least $25 billion for the year immediately preceding its application to the DCCA. Ill. S.B. 1285 (the "Corporate Headquarters Relocation Act," or "Boeing Bill"), passed both houses of the legislature on 5/31/01 and, at this writing, awaits the governor's signature.

4 The Illinois personal income tax rate is 3%, but DCCA has the discretion to allow only a portion of this tax as a credit.

5 Statistics furnished by DCCA as of 4/23/01.

6 DCCA Press Release, 6/1/01.

also was considering possible sites in Colorado and Texas. What may have made Illinois more attractive to Boeing were the financial incentives the state offered as part of the Corporate Headquarters Relocation Assistance Act (the "Boeing Bill"),[7] which, at this writing, is awaiting the governor's signature. Of the approximately $29 million in incentives that Boeing will receive from Illinois, about $17 million will be offered through the EDGE tax credit.

To understand why various companies – including Boeing – already have taken advantage of the Illinois EDGE tax credit, it is useful to examine the program's background and that qualifications and application process for the credit, as well as some specific EDGE "success stories." Other companies considering expansion or relocation should become more aware of the EDGE tax credit and evaluate its benefits before deciding on future moves.

EDGE Background

For years, various states offered some form of tax credit to lure companies to locate in the jurisdiction. In Illinois, the General Assembly found that the state's economy, while strong, was nonetheless highly vulnerable to other states that had major financial incentive programs for medium-sized and large firm relocations.[8]

Because many of the states surrounding Illinois preceded it in enacting EDGE-type tax credits, companies often chose those states over Illinois for their relocations or expansions. For instance, Kentucky beat out Illinois for a project that produced nearly 240 jobs and an investment of more than $12 million.[9] Similarly, Indiana won over Illinois on three projects that created 500 jobs and $355 million in capital investments.[10] Consequently, as a keynote to his economic development agenda, Illinois Governor George Ryan, in his first year, proposed the EDGE tax credit.

Illinois had no trouble noticing Indiana's success with its version of an EDGE-type tax credit enacted in 1994. The credit enabled Indiana to create more than 3,500 new jobs and more than $800 million in capital investments before its first year was complete in 1995.[11] With other surrounding states such as Iowa, Kentucky, Missouri, and Ohio enacting similar tax credits,[12] Illinois was no longer competing on a level playing field. The state was losing expansion and new development projects at an alarming rate.

To illustrate the situation, before Illinois enacted its EDGE tax credit the state's market "win rate" in attracting companies to Illinois was just 17%.[13] Since EDGE's relatively recent enactment, the credit's impact on the Illinois economy has been quite noticeable. For fiscal year 2000, Illinois' market "win rate" increased

[7] Ill. S.B. 1285, *supra* note 3.

[8] 35 ILCS § 10/5-3.

[9] See "Senate Committee OKs Tax Incentive Plan," State Net Capitol Journal – Illinois, 3/22/99.

[10] *Id.*

[11] Indiana Governor Evan Bayh's "State of the State Address," 1/10/95. The credit program is codified at Ind. Code § § 6-3.1-13-1 to 6-3.1-13-26.

[12] Iowa Code § § 15.326 to 15.336; Ky. Rev. Stat. Ann. § 154.24-010 to 154.24-150; Mo. Rev. Stat. § 100.700 *et. seq.*; Ohio Rev. Code. Ann. § § 5733.0610 and 122.17.

[13] The "win rate" is the ratio of the number of companies that relocated or expanded in a state compared to all companies that even considered the state for such a move. The "win rates" listed herein were obtained from DCCA.

dramatically to 46%.[14] For the first half of fiscal year 2001, it was up to an astounding 60%. Thus, the EDGE tax credit has been a powerful weapon in Illinois's economic incentives arsenal. (For some insight into the state's view of EDGE, see "Illinois DCCA Director Boosts EDGE Credit," accompanying this article).

Qualifying for EDGE

To qualify for the Illinois EDGE tax credit, a company must meet one of the following tests regarding new jobs and capital investment:

1. Invest $5 million in capital improvements to be placed in service in Illinois and employ at least 25 new employees in Illinois as a direct result of the project.
2. Invest capital and create new jobs in Illinois in amounts to be expressly specified by DCCA and the Illinois Business Investment Committee (to be formed within the Illinois Economic Development Board), provided that those two state agencies also determine that the project will provide a substantial economic benefit to the state.[15]

A company that proposes a project to meet these criteria must file an application for the credit, which is subject to DCCA approval. Of course, an understanding of the key terms in the statute will help taxpayers and their advisors to evaluate whether a particular project will qualify for the Illinois EDGE tax credit.

New, full-time employee. A "new employee" is a full-time worker first employed by the taxpayer in a qualified project after the taxpayer enters into a tax credit agreement with DCCA.[16] Generally, however, "new employee" does not include:

- An employee who performs a job that was previously performed by another employee, if that job existed for at least six months before hiring the new employee.
- An employee who was previously employed in Illinois by a person or entity related to the taxpayer (e.g., via stock ownership) and whose employment was shifted to the taxpayer after the taxpayer entered into the tax credit agreement.
- A child, grandchild, parent, or spouse of any individual who has at least a 5% ownership interest in the taxpayer's profits, capital, or value.[17]

A "full-time employee" is an individual who is employed for consideration for at least 35 hours each week or who renders any other standard of service generally accepted by industry custom or practice as full-time employment.[18]

The Application Process

As noted above, a taxpayer that believes it may qualify for the EDGE tax credit must then submit a written application using the standard form, which includes, among other things, the following information:

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[14] Not even a full fiscal year, since the credit was enacted in August 1999, and the fiscal year began in July.

[15] 35 ILCS § 10/5-20.

[16] 35 ILCS § 10/5-5.

[17] *Id.*

[18] *Id.*

1. A project summary.
2. A site map.
3. A summary of the new employees to be hired, including the number of, and payroll for, the new full-time jobs to be created as a result of the project, a description of their occupations, and a schedule of anticipated starting dates for the new hires.
4. A detailed description of the investment the taxpayer will make in capital improvements, and their designated location in Illinois.
5. Evidence that, if not for the tax credit, the project would not occur in Illinois.
6. Documentation of a cost differential for alternative, out-of-state sites, such as written information on non-Illinois sites under consideration, a comparison of industry costs in other states, a cost/benefit analysis of moving or closing the company, financial statements, internal memoranda, or any other financial records indicating the cost differential.[19]

Taxpayers may use various methods to indicate that, absent the EDGE tax credit, their projects would not occur in Illinois. A business might demonstrate that another state is under consideration and the company could efficiently locate elsewhere, or it could offer evidence that the credit is essential to its relocation decision.[20] DCCA approves participation in the program on a case-by-case basis.[21]

In conjunction with the Illinois Economic Development Board's Business Investment Committee, DCCA reviews each EDGE application submitted by taxpayers.[22] The Committee includes the directors of the DCCA and the Illinois Department of Revenue.[23]

In addition to the information to be included on the application (discussed above), other relevant factors that the Committee must consider include:

1. Will the project make the required investment and hire the required number of employees?
2. Is the project economically sound?
3. Have the political subdivisions affected by the project committed local incentives?
4. Will the granting of the credit result in an overall positive fiscal impact on the state?[24]

Mechanics of the Credit

As indicated above, the EDGE program allows approved companies to claim a credit against income tax in connection with the creation of new, full-time jobs in Illinois.[25] The amount and duration of the EDGE tax credit is left to the discretion of DCCA, which may negotiate the specific credit terms with the taxpayer, subject to statutory limitations.[26] Those limits are that the credit may not exceed the total Illinois income tax withheld from the new employees during the tax year,[27] and the

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[19] 14 Ill. Admin. Code § 527.40.

[20] See 35 ILCS § 10/5-25(b).

[21] See Giertz and McGuire, "Illinois Commerce Department Prepares Economic Development Guidelines," 17 State Tax Notes 1144 (11/1/99).

[22] 35 ILCS § 10/5-25(b).

[23] At the request of the Board, Committee members also may include the directors of the Bureau of the Budget and Employment Security, and an elected official of the affected locality, 35 ILCS § 10/5-25(a).

[24] 35 ILCS § 10/5-25(b); 14 Ill. Admin. Code § 527.50.

[25] 35 ILCS § 10/5-15.

[26] See 35 ILCS § 10/5-45.

[27] 35 ILCS § 10/5-15(d) and 10/5-5.

duration of the credit may not exceed ten years (or 15 years for eligible companies, as noted above).[28]

Another major limitation with regard to the EDGE tax credit is that it generally is not available for Illinois companies that seek to relocate within the state. The main purpose of the credit, of course, is to increase Illinois' ability to compete with other states in creating new jobs; this purpose is not advanced by allowing cities in Illinois to compete against one another for existing companies.

Companies Take Advantage of EDGE

Various communities throughout Illinois have felt the impact of the EDGE tax credit. For example, Danville, a city in eastern Illinois near the Indiana border, had been adversely affected by Indiana's EDGE-type credit. As noted above, many companies had selected locations in Indiana after comparing the benefits of that state vs. Illinois. Since Illinois enacted its EDGE tax credit, however, Danville is landing development projects that otherwise might have located in Indiana.

Consider Owens Corning/IKO, which chose Illinois, in part, because of the EDGE tax credit. Owens Corning is expected to begin construction of a $50 million state-of-the-art facility in Danville during the summer of 2001. The new facility will produce glass fiber mats for use in the production of commercial and residential roofing shingles.[29]

Quaker Oats, which previously had contemplated moving its Danville plant to another state, decided not only to stay in Danville but also to expand its facilities there. The EDGE tax credit was one of the factors in Quaker Oats's decision to stay put. In addition to retaining all 514 jobs, the expansion will add an additional 100 jobs and $40 million in capital investment.

Southern Illinois also is reaping the rewards of the EDGE tax credit. Pinckneyville, an area hit by coal mine closings and other economics challenges, recently announced a $76 million project for Matsushita Universal Media Services that will retain 400 jobs and create 500 more in southern Illinois. The state was in direct competition with Kentucky for the Matsushita facility. This high-tech company intends to produce the next generation of "digital versatile discs," or DVDs.[30] Aisin U.S.A. Manufacturing, Inc. will construct a $20 million automobile component manufacturing facility in Marion, Illinois, a town near the Kentucky border. Construction of the 150,000 square-foot building is scheduled to be completed by June 2002, and the company plans on employing approximately 200 people by the end of that year.[31] The EDGE tax credit was instrumental in attracting both the Matsushita and Aisin U.S.A. projects.

Southwestern and western Illinois also have benefitted from the EDGE tax credit. In southwestern Illinois, The Procter & Gamble Company is taking three existing facilities in Missouri and consolidating them into a new state-of-the-art warehouse and distribution center in Pontoon Beach, Illinois, a town near the Missouri border. Proctor & Gamble will lease an 800,000 square-foot facility in the Gateway Commerce Center, one of the largest in the greater St. Louis area, creating 130 full-

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[28] 35 ILCS § 10/5-45; see also *supra* note 3.

[29] DCCA Press Release, 3/30/00.

[30] DCCA Press Release, 3/14/00.

[31] Regional Economic Development Corp. (REDCO) news release dated 3/30/01. REDCO is a nonprofit entity set up to promote industrial development in southern Illinois. See the agency's website at www.redco.org.

time jobs.[32]

In western Illinois, Deere & Company, the world's leading producer of agricultural equipment, will benefit from the EDGE tax credit, along with several other programs designed to encourage economic growth in Illinois, when it constructs a new technical center for research and development activities near the John Deere headquarters in Moline, Illinois, close to the Iowa border. The construction of the new facility will result in the retention of 84 Illinois jobs.[33]

The Windy City benefits, too. Like the rest of the state, the Chicago area also is benefitting from the EDGE tax credit. Financial industry giant ABN AMRO North America, Inc. is planning to build a new high-tech office tower in Chicago's West Loop that will house most of the company's executive offices in one location. ABN AMRO will construct a state-of-the-art technology facility that is expected to house thousands of employees when completed. The project will result in the creation of up to 500 new jobs and the retention of 1,500 other employees. Construction of ABN AMRO Plaza is scheduled to begin later in 2001, and is slated for completion in 2003. The approximately $500 million development will house administrative functions that currently are fragmented across five downtown office buildings.[34]

Allstate Insurance company has created a 77,000-square-foot "customer interaction" center in Woodridge, Illinois. This facility supports Allstate's new initiative to sell insurance products over the Internet and telephone 24 hours a day, seven days a week, complementing its 15,500 strong agency salesforce. The center should create approximately 700 new jobs by the end of 2002.[35] The EDGE tax credit gave both of these Chicago-area companies – ABN AMRO and Allstate – a strong incentive to remain at their current locations by creating a positive tax environment that persuaded them to expand in Illinois.

Two other companies relocating to or expanding in the Chicago area may benefit from the EDGE tax credit. Shortly after the EDGE legislation was signed into law, the Ford Motor Company and Solo Cup Company pre-applied for the tax credit. Although these two companies have not formally submitted their application for the credit, their eligibility for EDGE is grandfathered as a result of their pre-application.

Ford plans on creating North America's first automotive supplier manufacturing campus on Chicago's south side. The project is expected to have an economic impact of $1.3 billion over the next ten years in conjunction with the creation of 1,000 new jobs.[36] Similarly, Solo Cup, a leading producer of plastic cups, containers, cutlery, and straws, also is eligible to take advantage of the EDGE tax credit. Solo is currently constructing a $71 million, one-million-square-foot manufacturing facility scheduled to be completed by the fall of 2001. This project is expected to bring approximately 550 jobs to Chicago's south side, in an area that has been vacant ever since USX laid off the last of its 20,000 steelworkers in 1992.[37]

While Solo and Ford did not base their

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32 DCCA Press Release, 1/9/01.

33 DCCA Press Release, 6/15/00.

34 DCCA Press Release, 1/8/01.

35 DCCA Press Release, 3/20/00.

36 DCCA Press Release, 9/7/00.

37 DCCA Press Release, 6/10/99.

expansion ventures solely on the EDGE tax credit, the decisions to pre-apply for the credit show that EDGE did play a part in their decision-making process. Thus, attributable at least in part to Illinois' job incentive program, the construction projects undertaken by Solo and Ford appear to be revitalizing Chicago's south side.

Conclusion

As part of its EDGE tax credit, Illinois now can compete on a level playing field with other states that have enacted similar programs. While not necessarily the sole reason for a company's relocating to or expanding in Illinois, the state's EDGE credit program certainly is one tool among many other financial incentives that DCCA has used to encourage companies to make new investments in people and capital in Illinois. In light of DCCA's most recent victory in convincing Boeing to relocate its headquarters to Illinois, surely many other businesses will look to benefit from the EDGE tax credit in the future.